

THE

gan

IN TWO PARTS.

CONTAINING

Together with

PART I.

*Lex dudum pulbre sonuit sermone Latino,
Horrida jam Patrio claudicat ista pede,
Lingua Diferta vale! ———*

THE THIRD EDITION.

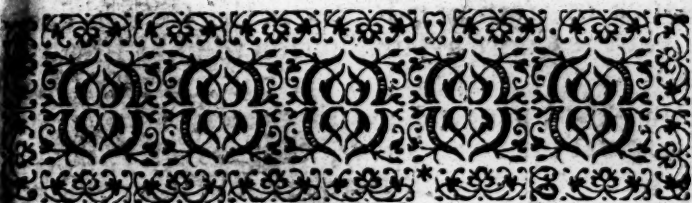
D U B L I N :

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THE ATTORNEY'S *Pocket Companion.*

The INTRODUCTION.

~~BEFORE~~ I begin my following
 Translation of the Proceedings in
 the Courts of *King's-Bench* and
Common-Pleas, I beg leave to say
 somewhat of a Suit or Controversy, upon
 which the Action is founded, and of the
 Action itself, with a short Account of the
 Course of Proceedings in general.

The Commencement of a Suit in the
King's-Bench is by Original or by Bill; If by
 Bill, it is when the Party is suppos'd to be
 already in Prison, and in the Custody of the
 Marshal; If by Original, it is the same with
 the *Common-Pleas*, where it is always by
 Original, unless against the Attorneys and
 Officers of the Court. And the Original issues
 out of Chancery, and is under the Great
 Seal.

Of the

Com-

mence-

ment of a

Suit in

the

King's

Bench and

in the

Great Common

Seal Pleas.

*What
gives the
Court a
Jurisdic-
tion.*

*Writ not
returned.*

*An Alias
and
Plures.*

*Of Pled-
ges.*

*Summons
or none.*

*Actions
demanda-
tory or
comman-
datory.*

*Of the
Original.*

Seal of *Great-Britain* returnable in the King's Bench or Common-Pleas, as the Case is, and gives the Court a Jurisdiction to hold Plea of that Matter; for till the Writ is returned, the Suit is not pending; and therefore upon an Original returned *Tarde*, that is to say, came so late to the Sheriff that he could not possibly execute it, an *Alias* and a *Plures* shall issue out of the Court where the Original is returnable and return'd; but if no Return be made, the *Alias* and *Plures* issue still out of the Court of Chancery. *Finch* 53.

This original Writ commands the Sheriff, that if the Plaintiff finds Pledges (that is) some Persons to be Sureties that he will prosecute his Suit, then to execute the Process, whereby to compel the Defendant to be before the Judges at the Day of the Return to answer the Complaint laid against him by the Plaintiff, and the Form of the Writ is to that very Purpose, (*viz.*) If the Plaintiff makes you secure in prosecuting the Suit, then Summon the Defendant, or put him to find Sureties as the Action is, either in Debt, Trespass or in Case.

And it is necessary to be known, that where the Action is by way of Complaint for not doing a Thing which ought to have been done, or for doing somewhat which ought not to have been done; in such Cases the Original runs thus,

Si A. fecerit te Secutum de Clamore suo pro sequendo, tunc Sumoneas; or Pone per vadios & Salvos Pleg. If A. makes you secure of prosecuting his Claim, then Summon the Defendant, or put him to find Sureties, or safe Pledges, as the Case is, without any Condition whatsoever.

But

But in Actions demandatory, where some- *Actions*
 what is demanded to be render'd or done, the *demandatory.*
 Writ begins with these mandatorial Words,

Precipe A. quod reddat B. unum Mesuagium or *Centum Solidos*, or *quod permittat B. habere Communiam pasturæ*, &c. as the Nature of the Demand is; which is as much as to have said, *Command [the Defendant] that he render to the Plaintiff so much Money, or that he permit the Plaintiff to Enjoy his Common of Pasture*, as the Case is. And unless the Defendant shall so do, that is, unless the Defendant pays the Plaintiff his Money, or permits him to Enjoy his Common of Pasture. And if the Plaintiff makes you secure in prosecuting his Claim, then Summons the Defendant by good Summoners, &c.

And these Pledges if they are not found to *Pledges*
 the Sheriff or in the Chancery before, yet *where to*
 they might be found in the Court where the *be found.*
 Writ was returned.

But for Servants of the Court, or others, *Servant*
 by the special Favour of the Chancellor they *of the*
 might be admitted to find Sureties there, in *Court.*
 the Court of Chancery, and then the Form of
 the Writ was *Quia predict' (the Plaintiff)*
fecit nos securum, &c. Sumoneas.

And at common Law; if a poor Man could *A poor*
 not find Sureties, then he pledged his Faith *Man that*
 that he would prosecute; and the Form of *can't find*
 the Entry was, *Et nisi fecerit, & predict' (the* *Pledges*
Plaintiff) fecerit te securum de Clamore suo *Register.*
prosequend. per Fidem suam, quia Pauper est *Brev. fol.*
Sumoneas. Finch 53. *228. Br.*

And it was necessary at Common Law *Pledges*
 before the Barriers that hedg'd and kept out *29.*
 ignorance were broken down, and Uncer- *How the*
 tainty and Confusion let loose upon the *Writs*
 Laws of England) that Men, who undertook *to must be*

INTRODUCTION.

to transact the Affairs of Persons, that had any Claim of Property from, or Complaint against others, should be Men of Learning, as well as Integrity, and be well skill'd in the Forms and Methods of Proceedings, before they took upon them to protect and defend the Properties of the People, which next to Life and Liberty is the most valuable Jewel to be taken Care of, and preserved; and therefore the Wisdom of the Law required these following Rules to be observed in the Law Proceedings.

*A Writ
to be
brought
in the
proper
County.*

Latin.

*Defen-
dant's
Christian
and Sur-
name to
be certain*

*Distinc-
tion of
Senior
and Ju-
nior.*

*No Vari-
ance.*

FIRST, That a Writ should be brought in the proper County, as Debt, upon an Escape, Trespafs for Cutting down Trees, spoiling of Corn, Grass, &c. But Trespafs for Battery, taking Goods, &c. may be in any County, because transitory in its Nature.

SECONDLY, That it was to be good Latin.

THIRDLY, That the Writ ought to express the Defendant by his Name of Baptism and Surname, his Place of Abode, his proper Addition, viz. Dignity, Profession, Trade, Mystery, &c.

FOURTHLY, If there are more Men of the same Name, that a proper Distinction be made to shew whether the Defendant was *John Stiles* the Elder, or *John Stiles* the Younger, and such like.

FIFTHLY, That all the Proceedings should be of a-piece, and stand as Monuments of Regularity to successive Ages, and that there should be no Variance between the Original and the

INTRODUCTION.

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the Declaration, nor between the Original, Declaration, and the Judgment.

And having said thus much of the Nature of an Action, and of the Writ, it is proper to mention somewhat of that which brings the Matter to Judgment, which consists of the Pleadings, and the intermediate Process, until Judgment, which Pleadings were at common Law called the Parole, consisting of two Parts, viz. the Declaration and the Pleadings.

Of the Parole.

Of a Declaration.

And here somewhat of a Declaration.

A Declaration is the Instrument, containing the Complaint of the Party, comprehending the Writ, and ought, in order to give the Defendant an Opportunity to make a proper Defence, to contain Certainty, according to a general Intent, as to the Time, Place and Quantity.

By the 36 of Edw. III. Cap. 15. It is ordained that a Count, which is the same with a Declaration, shall be good, if it hath Matter of Substance, tho' the Terms are not perfectly apt and proper.

Declarations to be good, tho' not in proper Terms.

If the Defendant confesses the Action, when the Entry is; And the said C. says he can't deny the Action of the said A. but that he the said C. owes him the Money; therefore it is considered that, &c. and if he says nothing at all to the Action, then the Entry is thus, *if in Case*; And the said C. by N. E. his Attorney, comes and defends the Force and Injury, when and where the Court will please to consider thereof, and the Damages and whatever else he ought to defend; and saith nothing to barr or stop the Action of the said E. whereby the said E. remains undefended

Action confess'd, Nil dicit, Of the Defence.

The Judgment.

B 3

by

*In Case
where In-
quiry is
to be a-
warded.
In Debt.*

by the said C. and by Reason thereof the said E. ought to recover his Damages occasioned by the Premises, but because it is unknown what Damages, &c. Therefore a Writ of Inquiry is awarded to assess the Damages before the Court awards Execution; but in Debt, because the Debt is in its Nature certain, an Execution immediately follows the Judgement.

*To clear
the Entry
from the
Imputa-
tion of
Absurdi-
ty.*

And it may not be amiss to take Notice of one Thing which falls under our Consideration, in that it seems at first a little odd, that a Person shall come into Court to defend the Matter, and say nothing at all when he is there, so that it might be objected that the introductory Words might be omitted (to wit that the Defendant comes and defends the Force and Injury, when, &c.)

But in Order to reconcile this Matter, and clear the Entry from any Imputation of Absurdity, I shall make these few Observations:

1st, That in order for the Judges to pronounce any Judgment, it is necessary that the Matter and the Parties appear to be before the Court, and that they appear so to be in proper Manner.

And when the Defendant appears, the Nature of his Appearance is such, that he undertakes to defend the Plaintiff's Action, and to be ready at the proper Times and Places appointed by the Court to proceed on the Matter in Variance.

2^{dly}, When a Rule therefore is given for the Party to plead, and he does not, the Law frames this Entry for the Defendant,

*When he
ought to
defend
the Force
and In-
jury.*

Shewing that he was in Court at the Day that he ought to have been to defend the Force and Injury, and when the Party was called upon to give in his Defence, the Court finding that he has nothing to say against the Plaintiff.

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Plaintiff's Action, then causes it to be entred, that the Defendant comes and defends, &c. and says nothing to barr or stop the Plaintiff's Action.

For without that Defence, the Defendant is a Stranger to the Suit, and in no Condition to plead or receive Judgment; and the Reason why the Expression is, (*comes and defends*) and not *came and defended*, is, that all Entries are supposed to be present Memorandums of what is transacted at that very Time, and not what had been done; and therefore in the Course of Proceedings they are set down *eo Instanti* of their Existence.

C. Lit.
127.

If the Defendant pleads, it must be in Abatement or in Bar, and as to Pleas in Abatement or in Bar, it will be taking up too much Place in this little Treatise, (which is design'd for another Purpose) to take Notice thereof in such Manner as it ought to be treated of; therefore I shall omit it, and shall only in general take Notice, that the Effect of the Pleadings is, that an Issue is at last to be join'd upon a Matter that the Parties will have tried, which will make an End of the Controversy between them.

What Pleas are to be pleaded.

And this Issue is in Fact, or in Law; an Issue in Fact, is properly when a Fact is deny'd by one, and maintained by the other; and the Plaintiff, if he takes Issue, prays, that it may be try'd by the Country; and if the Defendant takes Issue, he puts himself on his Country.

Of the Issue.

After which, if any Insufficiency of Pleading appears in the Record, whether Issue be join'd on it or no (it is called a *Jeofaile*) where either Party might replead, so that the Jury ready to try the Issue were discharged, and a Repleader began where the Defect was, &c.

Of a Repleader.

As if the Bar had been good, and the Replication ill, the Plaintiff should begin at his Replication, if the Plea and Replication be good, and the Rejoinder ill, then the Entry begins at the End of the Replication; if the Issue be taken on a Matter apparent of Record, it must be tried by the Record.

Matter of Fact how a Jury, which is to consist of 12 free and lawful Men, and therefore a Verdict by 11 is to be tried
By whom. void, and what is meant by *free and lawful*, is, that they should not be Villains, which signifies as much as Slaves, and by *lawful*, that is Subjects and not Aliens, Men within the Verge and Protection of the Laws, and not any outlaw'd.

A Jury. The Jury are made to come by a Writ of *Venire Facias*, commanding the Sheriff to cause them to be before the Justices at the Day of the Return, and thereto he returns

Summoned. a Panel of the Names of such Persons as he hath summon'd; and if they don't appear at the Day, a *Habeas Corpora* issues, and upon that a *Distringas*, thereby taking the Issues and Profits of their Lands till they do appear: When they do appear at the proper Day, both Parties are allowed Challenges to the Array or to the Poll.

How to be made to appear. But in the Common-Pleas there is no *Distringas*.

Of a Chal. Array. A Challenge to the Array is, when the Jury is not indifferently empanell'd.

To the Poll. A Challenge to the Poll is, when some of the Jury are not Persons in Law meet to try the same; and this Challenge to the Poll 'tis said, ought to be before the Panel is perused.

How Juryman to be examined. And this Examination of the Juryman, as to his being qualify'd or disabled to be upon that Jury,

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Jury, is try'd upon what is called a *Voyer Dire*, which is an Examination by the Court.

And he that challenges the Array cannot challenge the Poll without shewing a sufficient Cause, which is to be tried immediately. *Chal. Poll. not after Chal. Ar-*

And after challenging a Jurymen for one Cause, he shall not be challenged for another Cause. *ray. Not to be challeng- ed for two Causes.*

If sufficient of the Panel do not appear, then the Party is entitled to a *Tales*, which is always moved for by the Plaintiff's Council; but now since the late Act of Parliament of the 3d of King George the 2d, there is seldom any want of Jurors.

If the Plaintiff will not appear when he is called, and the Jury have the Matter in Charge, he is nonsuited, and the Defendant is dismissed, *sine Die* (*Anglice*) put without any Day to be appointed for his Appearance again. *When Plaintiff nonsuited!*

An Issue at Law (which is called a Demurrer) is, when admitting the Matters to be true, every of them shall depend upon the Judgment of the Court, and therefore the Trial is by the Judges.

And it is joined upon an Exception to the Count or Writ, which is a Demurrer; and it is either in Abatement, whereby it is alledged, That the Plaintiff ought to have a better Writ; or else it is in Barr, whereby the Defendant makes it appear, that the Plaintiff hath failed in his Action, or in the Manner of his Complaint; or if a Demurrer be by the Plaintiff, he makes it appear, that the Defendant fails in a good Defence, either in the Matter or the Manner thereof, so that the Demurrer may be either to the Declaration by the Defendant, or to the Plea of the Defendant by the Plaintiff, or to the Replication by the Defendant; and so on to the rest of

the Pleadings by the Plaintiff or Defendant.

Judgment and Execution.

That which determines the Action is Judgment and Execution, which follows either a Nonsuit or Verdict; for both Parties are entitled to an Execution, *viz.* the Defendant upon a Nonsuit, and the Plaintiff upon a Verdict.

Having given this Account of the Commencement of a Suit, and the Method of Proceeding, I now come to the Purpose for which this Treatise was intended.

Of Suits in the King's-Bench.

Properly in Trespass.

The proper Suits in the King's-Bench, were originally Suits for Offences, and Matters that were *contra Pacem*, which is against the King's Peace: But Matters of Contract, Debts, and Pleas of Land were not triable there; but an Action upon the Case, being only an Action of Trespass in its Nature, and called an Action upon the Case, because it is to be in *Consimili Casu*, and adapted to the Circumstances of the Case; of this the Court of King's-Bench might hold Plea by Original.

How they take Cognizance of Debts.

But in Debt, they can't have an Original out of Chancery, returnable there, to compel a Person to appear in such Action; yet by filing a Bill against the Defendant, thereby supposing him to be in *Custod. Marr.* that is in Prison, you may declare in Debt as well as in Trespass, or on the Case; for tho' you could not have such Process to compel a Man to appear there in such Action; yet when he is there, he shall rather be charged there with such Action, than that the Marshal shall have his Prisoner taken from him to be charged in another Court.





The Proceedings in the Court of KING'S-BENCH.

MIDDLESEX, The Sheriff is commanded, *Bill of*
that he take *A. B.* if he is to be found *Middle-*
in his Bailiwick, and safely keep him, so that *sex.*
he have his Body before our Sovereign Lord
the King, on *Wednesday* next after the *Octave*
of *St. Hilary*, to answer to *C. D.* of a *Plea*, or
(*in an Action*) of *Trespafs* * and that he
have there, at the same Time, this Precept.
By *Bill Ventriss.*

(* And also to a Bill of the *If it requires*
said *C. D.* to be exhibited a *Bail*
gainst the said *A.* according
to the Custom of His Majesty's Court before
himself; for a Debt of ten Pounds, and that he
have there this Precept.

* For taking and carry- *If in Trespafs*
ing away Goods and Chat- *for taking Goods.*
tels of the said *C.* to the Da-
mage of twenty Pounds.

* For detaining the Goods *Detinue.*
and Chattels of the said *C.*
to the Value of forty Pounds.

* For converting and dis- *Trover.*
posing of Goods and Chat-
tels of the said *C.* to the Value of forty
Pounds.

The Attorney's

Covenant. * For breaking of Covenants to the Damage of the said C. sixty Pounds.

Assumpsit. * And also to a Bill of the said C. for twenty Pounds, upon Promises and Undertakings.

Extrat.

George the Second, by the Grace of God, of Great-Britain, France, and Ireland, King, Defender of the Faith, and so forth, to the Sheriff of Norfolk, Greeting: Whereas we lately commanded our Sheriff of Middlesex, that he should take C. D. and E. F. if they should be found in his Bailiwick, and safely keep them, so that he might have their Bodies before Us at Westminster, at a certain Day now past, to answer to A. B. in an Action of Trespass. And also to a Bill of the said A. to be exhibited against the said C. according to the Custom of our Court before us, for a Debt of ten Pounds. And our Sheriff of Middlesex made a Return to us at that Day, That the said C and E, were not to be found in his Bailiwick; whereupon, on the Behalf of the said A. it is testified in our Court before us, that the said C. and E. lurk and wander up and down in your County; therefore we command you, That you take them, if they are to be found in your Bailiwick, and safely keep them, so as you have their Bodies before us at Westminster, on Wednesday next after three Weeks of St. Michael, to answer to the said Action and Bill of the said A. and have you there at the same Time this Writ. Witness Robert Lord Raymond, at Westminster, the 28th Day of June, in the sixth Year of our Reign.

The Return.

Ventris.

The

Pocket Companion.

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The several other Acetiams for Bail, to be va-
ed as before, only say instead of, and also to a
ill of the said A. to be exhibited against the said
, according to the Custom of His Majesty's Court,
before himself, you must say, according to the
Custom of our Court before us.

Somerset, to wit: A Latitat for A. B. against Instru-
C. D. and E. F. returnable on Wednesday next tions,
fter three Weeks of St. Michael.

Woodcroft.

If it be on a Qui tam, then you say, To answer
to A. B. who sues as well for us as for himself in
his Cause.

A Common Bail-Piece.

Of the Term of St. Michael, in the Sixth
Year of the Reign of King George
the Second.

London (to wit) A. B. having been served
with Process, is delivered to
Bail (that is to say)
To John Doe of London,
Yeoman, and
Richard Roe, of the same
Place, Yeoman,
Cock, At- at the Suit of
orney. C. D.

Inasmuch as the taking the Body is now dis-
pens'd with by Act of Parliament, where the
Debt is under ten Pounds, I think it would be
more

more Congruous to omit the Words, upon a Arrest, and make it as above in Common Bail-Pieces.

And I submit it whether traditur in Ballivum signifies any more, than that the Defendant is bailed, and whether this Form underneath does not convey a more adequate Idea of what is meant thereby.

A. B. is Bailed, upon an Arrest by E. F. &c. and the same in the common Bail-Piece, A. B. having been

serv'd with Process, is Bailed, by John Doe, &c.

A Special Bail-Piece.

Of the Term of St. Michael, in the Sixth Year of the Reign of King George the Second.

Somerset (to wit) A. B.

is delivered to Bail upon an Arrest to E. F. of the Parish of Froome in the said County, Yeoman, and William Asburst of Minehead, in the said County, Gent.

Fotherly Baker, Attorney.

at the Suit of Timothy Babb.

*

There is no Difference between the Bail-Piece upon a Habeas Corpus, and a Capi; only you say as above, is delivered to Bail upon a Habeas Corpus to E. F. &c.

If it is a Country Bail-Piece, thereon insert the Caption, viz. taken and acknowledged the roth Day of April, in the Year of our Lord 1732, at Froome, in the County aforesaid, before G. S. a Commissioner, &c. where the Asterism is placed.

If on a Certiorari you only say, is delivered to Bail upon a Writ to cause Proceedings to be certified.

Decla

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nty,

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up
say
beas

For Money laid
out and
expended:

aforesaid, was indebted to the said *A.* in another Sum of 50 *l.* of like lawful Money of *Great-Britain*, for the like Sum of Money laid out and expended by the said *A.* before that Time, at the Special Instance and Request of the said *C.* for and to the Use of the said *C.* And being so indebted, the said *C.* afterwards (that is to say) the same Day and Year at *Thetford* aforesaid, in Consideration thereof undertook and faithfully promised the said *A.* that he would well and truly content and pay him the said 50 *l.* last-mentioned whenever he should be thereto required.

For Money lent.

Was indebted to the said *A.* in the further Sum of 50 *l.* of like lawful Money for the like Sum before that Time, by the said *A.* lent to the said *C.* at his Special Instance and Request: and being so indebted, &c.

Indebited as sumpsit for Goods sold and delivered

Was indebted to the said *A.* in the further Sum of 60 *l.* of like lawful Money of *Great-Britain*, for divers Goods, Wares, and Merchandizes of the said *A.* by him before that Time sold and delivered to the said *C.* at his Special Instance and Request; and being so indebted, &c.

Quantum Valebant for Goods sold and delivered

And whereas the said *A.* afterwards (that is to say) the same Day and Year at *Thetford* aforesaid, at the Special Instance and Request of the said *C.* sold and delivered to him divers other Goods, Wares, and Merchandizes of him the said *A.* He the said *C.* in Consideration thereof, then and there undertook and faithfully promised, that he the said *C.* would well and truly pay to the said *A.* so much Money as such Goods, Wares, and Merchandizes so sold to the said *C.* were reasonably worth at the Time of the Sale and Delivery thereof, whenever he should be thereto required. And the said *A.* in fact saith, That the said Goods,

Wares,

wares, and Merchandizes, so sold and delivered to the said C. by him the said A. as above, here, at the Time of the Sale and Delivery hereof, reasonably worth the further Sum of 90 l. of like lawful Money (that is to say) at Thetford aforesaid, of which the said C. afterwards (to wit) the same Day and Year, at Thetford aforesaid, had Notice.

Was indebted to the said A. in another Sum of 90 l. of like lawful Money, for Meat, Drink, Washing, and Lodging by the said A. for the said C. at his like special Instance and Request before that Time found and provided. And being so indebted, &c.

And whereas afterwards (to wit) the Day and Year aforesaid, at Thetford aforesaid, in consideration, That the said A. before that Time, at the special Instance and Request of the said C. had found and provided for the said C. other sufficient Meat, Drink, Washing, and Lodging for a long Time (to wit) for the Space of twelve Months then past at Thetford aforesaid: He, the said C. in Consideration hereof, then and there undertook and faithfully promised the said A. That he, the said C. would well and truly pay to the said A. so much of lawful Money of Great-Britain as the said A. reasonably deserved to have of the said C. for the said Meat, Drink, Washing, and Lodging, so found and provided for the said C. as above, whenever he should be thereto required. And the said A. in fact says, that he reasonably deserved to have of the said C. for the said Meat, Drink, Washing and Lodging so found and provided by the said A. for him the said C. as above, another Sum of 90 l. of lawful Money of Great-Britain, of which the said C. afterwards (to wit) the same Day and Year at Thetford aforesaid, had Notice from the said A.

Was

Ind. A.
for Meat,
Drink,
Washing,
and Lodg-
ing.

A Quan-
tum Me-
ruit for
Meat,
Drink,
Washing,
and Lodg-
ing.

Ind. Aff.
for Work,
Labour,
and Ma-
terials.

Quan-
tum Me-
ruit for
Work, La-
bour, and
Mate-
rials.

Was indebted to the said *A.* in the Sum of 100 l. of like lawful Money for certain Work and Labour by the said *A.* in his Art and Trade of a Carpenter, before that Time done and performed for the said *C.* at his special Instance and Request, and for diverse Materials and necessary Things found and provided by the said *A.* in and about such Work, at the like special Instance and Request of the said *C.* And being so indebted, &c.

As in *Quantum Meruit* for Meat, &c. to the said *C.* Words at the Request of the said *C.* had done and performed for the said *C.* at his like special Instance and Request, certain other Work and Labour in his the said *A.*'s Art and Trade of a Carpenter, and had at the like Instance and Request of the said *C.* found and provided divers other Materials and Things used and employed in and about the said Work and Labour last-mentioned. He, the said *C.* thereupon and there, in Consideration thereof, undertook and faithfully promised the said *A.* that he would content and pay the said *A.* all such Sums of Money as the said *A.* deserved to have for such Work and Labour last-mentioned done and performed by the said *A.* for the said *C.* and for such Materials about the same, found and provided by the said *A.* as above said, whenever he should be thereto required. And the said *A.* in fact saith, That he reasonably deserves to have from the said *C.* for the said Work and Labour last above-mentioned, done and performed for the said *C.* by him, the said *A.* the Sum of 50 l. of like lawful Money. And that for the necessary Materials and Things found and provided by the said *A.* in and about such Work and Labour he reasonably deserved to have another Sum of 50 l. of like lawful Money, of which, &c. (as in other *Q. Mer.*)

Sum Was indebted to the said *A.* in the further Ind. Aff.
 n W Sum of 20 l. of like lawful Money for Curing *for a Cure*
 d Tr and Healing one *F. D.* Daughter of the said *of the De-*
 and p *D.* at the special Instance and Request of *fendant's*
 Instan the said *C.* of divers Diseases and Infirmities *Daughter*
 als a which the said *F.* before that Time laboured
 by t under. And being so indebted, &c.
 the l Had healed and cured *F. D.* a Daughter of Quan-
 said the said *C. D.* of divers other Infirmities and tum Me-
 Tiseases, which the said *F. D.* before that ruit for
 t. to Time laboured under. The said *C. D.* then the same.
 rd do and there, in Consideration thereof, under-
 ke s took and faithfully promised, That he, the said
 r W would well and truly pay to the said *A.*
 Tr all such Sums of Money as he the said *A.* rea-
 Instan nably deserved for the same. And the said
 rovid *A.* in fact faith, That he reasonably deserved
 ed a have from the said *C.* another Sum of 20 l.
 rk a for the last mentioned Cure, made, done and
 C. th performed as above, &c.
 erto And whereas the same *A.* and *C.* afterwards Infimus
 nat (to wit) the same Day and Year at *Thetford* Compu-
 I su aforesaid, stated Accounts between them of tasset.
 o ha and concerning divers Sums of Money, be-
 ions are that Time due to the said *A.* from the
 ne sa id *C.* and then in arrear and unpaid. And
 fou upon such Account stated, the said *C.* was then
 esai and there found to be in Arrear to the said *A.*
 An the Sum of 100 l. of like lawful Money.
 nab And being so found in Arrear, the aforesaid
 e sa *C.* in Consideration thereof, (to wit) the same
 do Day and Year at *Thetford* aforesaid, under-
 e sa took, &c.
 one Nevertheless, the aforesaid *C.* not regard-
 s an ing his said several Promises and Undertak-
 A. ings, made in form aforesaid; but contriving,
 afo and fraudulently intending, craftily and sub-
 o l. illy to deceive and defraud the said *A.* in this
 oth Particular, hath not paid the said several Sums,
 W on

The Attorney's

or any Part thereof, to the said *A* (nor in any manner howsoever made him Satisfaction for the same, altho' the said *C*. hath been requested thereto by the said *A*. afterwards (to wit) the tenth Day of *May*, in the fourth Year above-mentioned, and often afterwards at *Thetford* aforesaid, in the County aforesaid) But he, the said *C*. hitherto hath, and still doth refuse so to do: Wherefore he the said *A*. saith, That he is thereby injured and endangered to the Value of 300 *l*. and therefore brings this Suit, *and so forth*.

For Declarations on Promissory Notes and Bills of Exchange, see hereafter among the Declarations in the *Common-Pleas*.

*In Trover
for Cat-
tle.*

A. B. complains of *C. D.* in the Custody of the Marshal, *and so forth*, for that the said *A. B.* the first of *March*, in the fifth Year of the Reign of His Present Majesty, our Sovereign Lord *George the Second*, King of *Great-Britain*, *and so forth*, at *London*, in the Parish of *St. Mary le Bow*, and in the Ward of *Cheap*, was possessed of divers Cattle, (that is to say) of an Ox, a Bull, and a Cow, of the said *A. B.* of the Price of 40 *l*. as of his own Cattle, and being so possessed, lost his said Cattle out of his Hands and Possession, which said Cattle afterwards (to wit) the Day and Year aforesaid, came to the Hands and Possession of the said *C. D.* who found the same; nevertheless the aforesaid *C. D.* knowing the said Cattle to be the Cattle of the said *A. B.* and of right to belong and appertain to him the said *A. B.*; but contriving and fraudulently intending craftily and subtilly to defraud the said *A. B.* of his said Cattle, altho' often requested, hath not delivered the same to the said *A. B.* but afterwards

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A. B.
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Lord
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ards (to wit) on the said tenth Day of De-
ember, in the Year aforesaid, converted and
disposed of the said Cattle to his own Use in
London aforesaid, in the Parish and Ward a-
foresaid, to the Damage of the said A. B. 60l.
and therefore the said A. B. brings this Suit,
and so forth.

A. B. complains of C. D. at another Time Declara-
tion upon
all'd C. D. of the Parish of St. Martin's in the a Bond.
Fields, in the County of Middlesex, Gentle-
man, in the Custody of the Marshal of the Or in the
Marshalsea of our Sovereign Lord the King, Custody of
being before the King himself, of a Plea, that the She-
riff of the
render to him one hundred Pounds of law- County of
ful Money of Great-Britain, which he owes to, Norfolk
and unjustly detains from him, forasmuch as if against
whereas the said C. the first Day of June, in a Prisoner
the sixth Year of the Reign of his present Ma- in Custody
jesty George the Second, King of Great-Britain,
and so forth, at the said Parish of St. Martin's
the Fields, in the County aforesaid, by his
certain Writing Obligatory, commonly call'd,
Bond seal'd with the Seal of the said C. and
shewn here to his present Majesty's Court, the
date whereof is the same Day and Year last
above-mentioned, acknowledged himself, held
and firmly bound to the said A. in the said one
hundred Pounds, to be paid to the said A.
whenever he should be thereto required. Ne-
vertheless the said C. altho' often required to
pay the same, hath not paid to the said A. the
said one hundred Pounds, or any Part there-
of; but hitherto altogether hath denied, and
now doth deny so to do: whereupon the said
A. faith, that he is prejudiced and endamaged
to the Value of 200 l. and therefore brings this
Suit, and so forth.

J. D.

Debt upon a Judgment.

J. D. late of *London*, Mercer, was summoned to answer to *John Denton* in a Plea, that he should render to him 50 l. which he owes to, and unjustly detains from him, and whereupon the said Plaintiff, by *J. M.* his Attorney, saith, That the said *J. D.* in the Term of *St. Michael*, in the fifth Year of the Reign of his present Majesty, in his said Majesty's Court, before himself at *Westminster*, in the County of *Middlesex*, by Consideration of the said Court, had recovered against the said *J. D.* 50 l. which was awarded to the said *J. Denton*, for his Damages, which he had sustained as well by reason of a certain Trespass upon the Case, lately done, to the said *J. Denton* by the said *J. Denman*, as for his Expence and Costs about his Suit in that behalf by him laid out, whereof he is convicted, and so forth as by the Record and Proceedings thereof in the same Court, before his present Majesty may appear; and the same *J. Denton* hath not as yet sued out an Execution upon that Judgment by which an Action accreweth to the said *J. Denton*, to require and have from the said *J. Denman*, the said 50 l. nevertheless the said *J. Denman*, altho' often requested, hath not rendered to the said *J. Denton* the said 50 l. but hitherto altogether hath, and still doth deny so to do; wherefore the said *J. Denton* saith, he is injured and endamaged to the Value of 10 l. and therefore hath brought this Suit.

A Declaration for Rent in Arrear of a Lease Parol, and likewise for Chaff bought.

Kent (to wit) *W. B.* complains, of *H. A.* in the Custody of the Marshal, and so forth, of a Plea, that he render to him 7 l. 6 s. 8 d. of lawful Money of *Great-Britain*, which he owes to, and unjustly detains from him, for that where

the said *W.* the last Day of *September*, in the
 Year of the Reign of his present Majesty,
Plumstead, in the County aforesaid, did
 demise, Grant, and to farm Lett to the said
W. two Acres and an half of Reed Land, with
 the Appurtenances, Parcel of a certain Piece
 of Land, called the *Maggot*, and six Acres of
 pasture, called *Brandonsburg*, with the Appur-
 tenances, situate, lying, and being in *P.* afore-
 said, in the County aforesaid; to have and to
 hold to the said *H.* and his Assigns, from the
 Feast of *St. Michael* the Archangel, then last
 past, for one whole Year then next ensuing,
 and so from Year to Year so long as both the
 Parties should agree; yielding and pay-
 ing therefore yearly, and every Year, to the
 said *W.* for the Tenements aforesaid, with the
 appurtenances (which the said *H.* holds and
 enjoys) 6 *l.* of lawful Money of *Great-Britain*
 the Feast of the Annunciation of the Blessed
Virgin Mary, and *St. Michael* the Archangel,
 every Year by equal Portions. By Virtue
 of which said Demise the aforesaid *H.* held
 and occupied the said Tenements, with the
 appurtenances aforesaid, from the Feast of
St. Michael the Archangel, for two whole
 years from thence next ensuing, and six
 pounds of the aforesaid 7 *l.* 6 *s.* 8 *d.* to be
 paid for one Year, at the End of the said
 Feast of *St. Michael* the Archangel, in the
 Year of his said present Majesty was, and
 the said *W.* stood in Arrear, and unpaid by
 the said *H.* by which Means this Action hath
 accrued to the said *W.* against the said *H.*
 the said six Pounds of the said 7 *l.* 6 *s.* 8 *d.*;
 and also the aforesaid *H.* afterwards (to wit)
 the 10th Day of *December*, in the fourth
 Year of the Reign of his said present Majesty,
P. aforesaid, in the County aforesaid, bought
 of

of the said *W.* 17 Quarters of Chaff for 26
and 8 d. residue of the aforesaid 7 l. 6 s. 8 d.
which said several Sums, in the Whole,
mount to the said Sum of 7 l. 6 s. 8 d. Neve-
theless, the said *H.* tho' often requested there-
to, *and so forth*, by the said *W.* the said *H.* has
not yet paid, but still doth refuse to pay the
same, to the Damage of the said *W.* 20 l. And
therefore he brings this Suit, *and so forth.*

*Declara-
tion upon
the Af-
signment
of a Bail
Bond to
the Plain-
tiff, ac-
cording to
the Sta-
tute of the
1st and
2d of Q.
Anne.*

London (—) *A. B.* Gent. Assignee of *John
Fuller*, Esq; and *Sir Isaac Shard*, Kt. Sheriffs
London, according to the Form of the Statute
in such Case made and provided, complains
E. F. otherwise called *E. F.* of (*such a Place*
as in the Bond) being in the Custody of the
Marshal of His Majesty's *Marshalsea*, before
the King himself, of a Plea, that he rendered
to him one hundred Pounds of lawful Money
of Great-Britain, which he owes to, and un-
justly detains from him for this Cause (that
is to say) that whereas the said *A.* after the
first Day of the Term of the holy Trinity
in the Year of our Lord, One thousand seven
hundred and six, (that is to say, on the twen-
tieth Day of *June*, in the Year of our Lord
One thousand seven hundred and thirty-one)
was prosecuted out of his Majesty's Court
held before the King himself at *Westminster*,
the said Court being at that Time held there,
and the said *E.* his said Majesty's Writ
being directed to the then and now Sheriffs
of London, by which said Writ, our said So-
vereign Lord the King commanded the Sheriffs
of London to detain the said *E.* That they should
keep him, so that the said *E.* might be brought
before our said Sovereign Lord the King, on Monday next

After three Weeks from the Feast of St. Michael then next following, to answer to the said *A.* of a Plea of Trepass; and also to a Bill of the said *A.* against the said *E.* for a Debt of fifty Pounds, to be exhibited according to the Custom of his said Majesty's Court, held before the King himself. Which said Writ afterwards, and before the Return thereof, (that is to say) on the twenty-third Day of *June*, in the Year of our Lord One thousand seven hundred and thirty-one, was delivered to the said *John Fuller*, Esq; and *Sir Isaac Shard*, Kt. then and now Sheriffs of *London* aforesaid, at *London*, in the Parish of *St. Mary-le-Bow* in the Ward of *Cheap*, to be executed in due Form aforesaid. By Vertue therefore of which said Writ, the said *John Fuller* and *Sir Isaac Shard*, then and now Sheriffs of *London* aforesaid, afterwards and before the Return of the same (that is to say) the Day, and Year last above-mentioned, at *London* aforesaid, in the Parish and Ward aforesaid, took and arrested the said *C. D.* and had him the said *C.* in their Custody. And having him so there in their Custody by Vertue of the said Writ afterwards, that is to say, on the said twenty-third Day of *June*, in the said Year of our Lord, One thousand seven hundred and thirty-one, the said *John Fuller* and *Sir Isaac Shard*, Sheriffs of *London* aforesaid, took Bail for the Appearance of the said *E.* according to the Tenor of the said Writ; and thereupon the said *E.* afterwards, that is to say, the same Day and Year last above-mentioned, at *London* aforesaid, in the Parish and Ward aforesaid, by a certain Writing Obligatory (commonly called a Bail-Bond) sealed with his Seal, and shewn here to this Court, the Date whereof is the same Day and Year (above) became bound to the said *John Fuller*

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and Sir *Isaac Shard*, then and now Sheriffs of *London* aforesaid, in one hundred Pounds of good and lawful Money of this Kingdom of *Great-Britain*, to be paid to the said *John Fuller* and Sir *Isaac Shard*, Sheriffs of *London* aforesaid, whenever he should be thereto required, with a Condition there underwritten, That if the said *E.* should appear before our Sovereign Lord the King at *Westminster*, on *Wednesday* next after fifteen Days of *St. Martin* then next following, to answer to the said *A. B.* of a Plea of *Trespas*, and also to a Bill of the said *A.* to be exhibited according to the Custom of his said Majesty's Court, before the King himself, against the said *E.* for 50 l. that then the said Obligation should be Void and of none Effect; otherwise, to be and remain in full Force, Power, and Vertue, as by the said Bond and Condition, relation being thereto had, more fully may appear. And the said *A.* further says, That the said *E.* did not appear before our Sovereign Lord the King at *Westminster* on the said *Wednesday* next after fifteen Days from the Feast Day of *St. Martin*, according to the Tenor of the said Writ, whereby the said Bond became forfeited to the said *John Fuller* and Sir *Isaac Shard*, as Sheriffs of *London* aforesaid. And the said Sheriffs afterwards, that is to say, on the twentieth Day of *December*, in the said Year of our Lord, One thousand seven hundred and thirty-one, at *London* aforesaid, in the Parish and Ward aforesaid at the Request, Costs, and Charges of the said *A.* by a certain Indorsement in Writing, made and indorsed on the said Bond, (bearing Date the same Day and Year last above-mentioned, then and there sealed and delivered by the said *C.* in the Presence of two credible Witnesses, that is to say, *G. H.* and *I. K.* who

who have subscribed their Names thereto) assigned to the said *A.* the said Bond made and taken for the Appearance of the said *E.* as above, according to the Form of the Statute in such Case made and provided, which said Indorsement he, the said *A.* brings here into Court, the Date whereof is the Day and Year above. By reason of which said Premises, and by force of the said Statute in such Case made and provided, an Action accrued to the said *A.* as Assignee of the said *John Fuller* and *Sir Isaac Shard*, then Sheriffs of *London* aforesaid, to require and have of the said *E.* the said one hundred Pounds. Nevertheless the said *E.* altho' often required, hath not paid the said one hundred Pounds, either to the said *John Fuller* and *Sir Isaac Shard*, or either of them, or to the said *A.* but hitherto hath, and still doth deny to pay the same, either to the said *John Fuller* and *Sir Isaac Shard*, or either of them, or to the said *A.* as Assignee to the said *John Fuller* and *Sir Isaac Shard*, to the Damage of the said *A.* fifty Pounds. And therefore he brings this Suit, *and so forth.*

Trespass and false Imprisonment.

Northampton. *William Lee* complains of *William Scarmier* and *Francis Adams*, being in the Custody of the Marshal of the *Marshalsea* of our Sovereign Lord the King, before the King himself, for that on the 15th Day of *March*, in the 5th Year of the Reign of his present Majesty our Sovereign Lord *George the Second*, *and so forth*: they, the said *W. S.* and *T.* with Force and Arms made an Assault on the said *William Lee*, at *Daventry* in the said County, and then and there beat, wounded, ill treated, took and imprisoned him, and without any

reasonable or lawful Cause, and against the Laws and Customs of this Kingdom of Great Britain, detained him there in the said Prison a long Time, (*that is to say*) for the Space of twenty-four Hours from thence next following, and until the said *William Lee* made an End with the said *William Scarmer* and *Francis Adams*, for five Shillings and six Pence for his Discharge, and then and there committed other Injuries against him, against the Peace of our said Sovereign Lord the King, and to the Damage of the said *William Lee* 40 l. and therefore he brings this Suit, and so forth.

*Trespass
for break-
ing the
Plain-
tiff's
Close, and
fishing in
his Fish-
ery.*

Warwick. Thomas Peer, Esq; complains of *John Lucy, Esq;* *Edward Loude*, and *John Watterman*, being in the Custody of the Marshal of the Marshalsea of our Sovereign Lord the King, before the King himself, for that on the 17th Day of *April*, in the 6th Year of the Reign of his present Majesty, they the said *J. E.* and *J. W.* with Force and Arms broke and entred into the Close of the said *Thomas Peer*, called *Cliffe-Bank*, at the Parish of *Alveston*, in the said County of *Warwick*; and in walking in the said Close, trod down and destroyed the Grass of the said *Thomas Peer*, then and there growing, to the Value of forty Shillings. And also for that afterwards, that is to say, the same Day and Year at D. aforesaid in the said County of *Warwick*, and divers Days and Times between the said 17th Day of *April*, and the 1st Day of *June* then next following, with Force and Arms they fish'd in the separate Fishery of the said *Thomas Peer*, in the River *Avon*, in the Parish of *Alveston* aforesaid, in the said County of *Warwick*, and then, and at the said several Times took and carried away Fishes from his said se-

parat

parate Fishery there found, that is to say, one thousand Roaches, and one thousand Gudgeons, to the Value of fifty Pounds, and then and there committed other Injuries against the said *Thomas Peer*, contrary to the Peace of our said Sovereign Lord the King, and to the Damage of the said *T. Peer* 200 l. and therefore he bring this Suit, and so forth.

By *Bryan* a Distinction was made between a separate Fishery and a free Fishery; For no Man, says he, can have a separate Fishery but in his own Soil, and solely to himself; but a Man may grant a free Fishery in his own Pond to several Persons; which was agreed to by *Littleton*, Mich. 17. E. 4. 6. *Sir William Calthrop's* Case. See likewise the Case of *Upton and Dawkin* in the *Modern Reports*, *Hillary* the 2d of King *James* the Second, where a Judgment was reversed for *Libera Piscaria*, instead of *Separali Piscaria*, 3 *Mod.* 97.

It would be very proper, before I conclude of Declarations, to observe this Rule that was made as follows;

Trinity Term, the fifth and sixth of King *George* the Second.

It is order'd, That upon all Proceſs to be ſued out of this Court, returnable the firſt or ſecond Return of any Term, if the Plaintiff declares in *London* or *Middleſex*, and the Defendant lives within twenty Miles of *London*, the Declaration ſhall be delivered with Notice to plead within four Days after the Delivery thereof; and the Defendant ſhall plead within the ſame four Days, without any Impar-
hance. And in Caſe the Plaintiff declares in any other County, or the Defendant lives above twenty Miles from *London*, the Decla-

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ration shall be delivered with Notice to plead within eight Days after the Delivery thereof, and the Defendant shall plead within the said eight Days without any Imparance; and in Default of Pleading as aforesaid, the Plaintiff may sign his Judgment, any Rule of this Court to the contrary notwithstanding.

General Barrs.

Non Assumpfit
infra sex
Annos.

And the said C. P. by G. W. his Attorney, &c. (as before in the General Issues) and saith, That the said A. ought not to have or maintain his said Action thereof against him, because he saith, that the said A. (*such a Day and Year*) exhibited his said Bill against him the said C. and that he the said C. did not at any Time within six Years before the Day of exhibiting the said Bill, undertake in Manner and Form as the said A. above hath declared against him; and this he is ready to verify, wherefore he prays Judgment, whether the said A. ought to have or maintain his said Action thereof against him, *and so forth.*

Replica-
tion.

And the said A. saith, That (notwithstanding any thing by the said C. above alledged in his Plea) he ought not to be precluded from having his said Action thereof against him, because he saith, That the said C. did within six Years before the Day of his, the said A's exhibiting his said Bill, undertake in the Manner and Form as the said A. hath above declared against him; and this he prays may be enquired of by the Country, and the said C. prays likewise the same; therefore let a Jury thereof come before our Sovereign Lord the King at *Westminster* on *Tuesday* next after fifteen Days of *St. Martin*, and who are no ways related either to the said A. the Plaintiff, or to

to the said C. to make a Jury between the Parties aforesaid, of the Plea aforesaid, because as well the said A. as the said C. (between whom is the Matter in variance) have submitted themselves to the Jury. The same Day is given to the said Parties there, *and so forth.*

Because he saith, that he did appear before our said Sovereign Lord the King at *Westminster* aforesaid, on (such a Day) *viz. the Day mentioned in the Condition, which we'll suppose to be on Monday next after three Weeks of St. Michael,* to answer to the said A. in the said Condition abovenamed, of the said Plea of Trespass, according to the Form and Effect of that Condition; which said Appearance was then and there recorded in his said Majesty's Court, before the King himself, as by the Record thereof, remaining in the same Court of our said Sovereign Lord the King, before the King himself at *Westminster*, manifestly appears; and this he is ready to verify by the Record; wherefore he prays Judgment whether, &c.

*Issue on a Compe-
ruit ad
Diem in
Trespass.*

That he ought not to be precluded from having his said Action thereof against him, because he saith, that there is no such Record of the said Appearance of the said C. before our said Sovereign Lord the King at *Westminster* on Monday next after three Weeks of St. Michael, now remaining in the said Court of our said Sovereign Lord the King, before the King himself at *Westminster* aforesaid, as the said C. hath above alledged, and this he is ready to verify; wherefore he prays Judgment, and his Damages occasioned by the said Trespass to be awarded to him, *and so forth.*

*Replica-
tion.*

And the said C. says, that there is such a Record of the Appearance of him the said C.

Rejoinder.

The Attorney's

before our said Sovereign Lord the King, before the King himself at *Westminster*, on the said *Monday* next after three Weeks of Saint *Michael*, now remaining in the said Court of our said Sovereign Lord the King, before the King himself at *Westminster* afore said, as he hath above alledged; and this he is ready to verifify by the Record itself; therefore the said C. is commanded, that he have here, on *Monday* next after eight Days of *St. Martin*, the Record itself, under the Peril attending the Neglect thereof.

Which Peril is that of having the Judgment of the Court, that he failed in his Record, and therefore is subject to Costs.

If the Defendant is to plead to a Bond *Comperuit ad Diem*, where the Condition is not set forth in the Declaration, then his way of pleading it must be thus:

Compe-
ruit ad
Diem,
with Oyer
of the Con-
dition.

And the said C. by *George Woodcraft* his Attorney comes, and defends the Force, Injury, and Damages, and whatever else he ought to defend, where and when the Court will take the same into Consideration, and craves Oyer of the said Obligation, and it is read to him: and he likewise craves Oyer of the Condition of the said Obligation, which is read to him in these Words, that is to say, The Condition of this Obligation is such, (here recite the Condition) which being read and heard, the said C. saith, that he, the said A. ought not to have or maintain his said Action thereof against him, because he saith, that after the making of the said Obligation, and before the Day of the exhibiting the Bill of the said A. that is to say,

QA

on Monday next after three Weeks of St. Michael. So plead it as before.

If it is thought for the Defendant's Advantage to set forth the Obligation as well as the Condition, then 'tis proper to plead it in such manner.

Because he saith, that he the said C. at and upon the said 26th Day of June, mentioned in the said Condition, paid to the said A. the 30 l. specify'd in the said Condition, according to the Form and Effect of the said Condition; and this he is ready to verify; wherefore he prays Judgment, whether the said A. ought to have or maintain his said Action thereof against him the said C. and so forth.

Performance of the Condition pleaded to a Bond for the Payment of Money.

Because he saith, that at and upon (such a Day) in the said Condition mentioned, he the said C. did not pay to the said A. the said 30 l. specified in the said Condition, according to the Tenor of the said Condition, in Manner and Form as the said C. above alleges in his Plea, and this he prays may be enquired of by the Country; and the said C. prays likewise the same, and so forth.

Replication.

Note, If you would plead Payment of the Money after the Day in the Condition, which the Defendant is at Liberty to do by the Stat. of the 4 and 5 of Queen Anne, Cap. 16. by which it is enacted, "that where an Action of Debt shall be brought on any single Bill, or where an Action of Debt, or *Scire facias*, shall be brought upon any Judgment, if the Defendant hath paid the Money due upon such Bill or Judgment, such Payment shall and may be pleaded in Barr of such Action or Suit: And where an Action of Debt is

C. 5.

Brought

The Attorney's

"brought upon any Bond which hath a Con-
 "dition or Defeazance, to make void the
 "same upon Payment of a lesser Sum, such
 "Payment after the Day was made good: And
 "that if at any Time pending an Action upon
 "any such Bond with a Penalty, the Defen-
 "dant shall bring into Court, where the Acti-
 "on is depending, all principal Money and
 "Interest due on such Bond, and also all such
 "Costs as have been expended in any Suit or
 "Suits in Law or Equity, upon such Bond the
 "said Money so brought in, shall be deem'd
 "and taken to be in full Satisfaction and Dis-
 "charge of the said Bond, and the Court shall
 "and may give Judgment to discharge every
 "such Defendant of and from the same accor-
 "dingly.

You must plead it in this Manner:

*Plea of
 Payment
 after the
 Day in
 the Con-
 dition,
 pursuant
 to the Act
 of Parlia-
 ment.*

Which being read and heard, the said *Anne*
 says, that the said *Lucy* ought not to have or
 maintain her said Action thereof against her
 the said *Anne*, because she saith, that after the
 making of the said Obligation; and after the
 said tenth Day of *June*, mentioned in the said
 Condition, and before the Day of the exhibit-
 ing of the Bill of the said *Lucy*, that is to say,
 on the sixteenth Day of *July*, in the Year a-
 foresaid, at *Thetford* aforesaid, she, the said
Anne, paid to the said *Lucy* the said twenty
 Pounds contained in the said Condition, ac-
 cording to the Form of the Statute in such
 Case made and provided, together with all In-
 terest then due thereon; and this she is ready
 to verify; wherefore she prays Judgment whe-
 ther the said *Lucy* ought to have or maintain
 her said Action thereof against her the said
Anne, and so forth.

*Replica-
 tion.*

And the said *Lucy* saith, that notwithstanding
 any thing above alledged by the said *Anne*

In her said Plea, she, the said *Lucy* ought not to be precluded from having her said Action thereof against the said *Anne*, because she, the said *Lucy*, saith, that the said *Anne* hath not paid to her, the said *Lucy*, the said principal Sum of 20 l. and all Interest due thereon, in the Manner and Form as the said *Anne* hath above alledged in her Plea; and this she prays may be enquired of by the Country; and the said *Anne* prays likewise the same, *and so forth.*

Because he saith, that at the Time of making the said several Promises and Undertakings in the said Declaration above specified, he the said *J.* was within the Age of twenty one Years, (to wit) of the Age of nineteen, and no more; and this he is ready to verify; wherefore he prays Judgment, &c. Inframing the said several Promises and Undertakings *Etatenu.*

And the said *J. T.* saith, that notwithstanding any thing by the said *J. S.* above alledged in his Plea, he, the said *J. T.* ought not to be precluded from having his Action against the said *J. S.* because he saith, that the said Sum of 30 l. laid out and expended by the said *J. T.* for the said *J. S.* was for Taylor's Work done and performed for the said *J. S.* and for Materials and necessary Things used in and about such Work, and found and provided by the said *J. T.* for necessary Apparel and Cloathing the said *J. S.* fit for his Degree, (that is to say) at *London* aforesaid, in the Parish and Ward aforesaid; and this he is ready to verify: wherefore he prays Judgment, and that his Damages, occasioned by the Premises, may be awarded to him, *and so forth.* *Replication that they were for Necessarys, and fit for the Defendant's Degree.*

Ed. Northey.

And the said *J. S.* saith, that the said 30 l. mentioned by the said *J. T.* to have been laid out and expended by him for Taylor's Work *Rejoinder.*

done

The Attorney's

done and performed for the said *James*, and for the Materials and necessary Things by him likewise mentioned to have been found and provided by the said *John*, for necessary Apparel and Cloathing of the said *James*, were not for necessary Apparel and Cloathing of the said *James*, in the Manner and Form as the said *John* hath above, in his Replication alleged; and of this he puts himself upon the Country; and the said *John* does likewise the same, and so forth.

F. Pemberton.

Son Af-
sault De-
mesne.

Not guil-
ty to part.

And the said *W.* by *J. Allen*, his Attorney, comes and defends the Force, Injury, and Damages, and whatever else he ought to defend, where and when the Court will please to take the same into Consideration. And as to coming with Force and Arms; or whatever else is against the Peace of our Sovereign Lord the King; and as to the Beating and Maiming specified in the said Declaration, the said *W.* saith; he is not guilty thereof, and of this he puts himself upon the Country, and the said *Edward* does likewise the same. And as to the Residue of the said Trespass above supposed to have been committed by him the said *W.* he the said *W.* saith, that the said *Edward* ought not to have or maintain his said Action thereof against him, because he saith, that at at the same Time, when the said Residue of the said Trespass is supposed to have been committed, he the said *Edward*, at *London* afore-said, in the said Parish and Ward; assaulted the said *W.* and would have then and there beat and wounded him, unless he, the said *W.* had then and there defended himself against the said *Edward*, as soon as he could; for which Reason the said *W.* did then and there defend himself against the said *Edward*, and therefore

the

the said *W.* saith, that if any Damage or Misfortune then and there happen'd to the said *Edward*, it fell out and happen'd to the said *Edward* by his own assaulting the said *W.* as above, and was not done by the said *W.* but in his own Defence; and this he is ready to verify; wherefore he prays Judgment whether the said *Edward* ought to have or maintain his said Action thereof against him, *and so forth.*

And the said *Edward*; as to the Residue of the said Trespass, saith, that (notwithstanding any thing by the said *W.* above in his Plea alledged) he ought not to be precluded from having his said Action against the said *W.* because he saith, that he the said *W.* on the Day and Year, and at the Place in the Declaration above-mentioned, the said *W.* of his own Wrong, and without any such Reason above alledged, by the said *W.* in his Plea, committed an Assault upon the said *Edward*, and beat, wounded, and ill-treated him in the Manner and Form as he the said *Edward* hath above complained against the said *W.* and this he prays may be enquired of by the Country; and the said *W.* prays likewise the same; therefore let a Jury come before our Sovereign Lord the King at *Westminster*, on *Thursday* next after three Weeks from the Day of the Holy Trinity, as well to try this Issue, as the other Issue joined between the said Parties, and who neither, *and so forth*; to recognize, *and so forth*; because as well, *and so forth*; the same Day is given the said Parties there, *and so forth.*

Because he saith, that he hath fully administered all that were the Goods and Chattels Adminis- of the said *Anthony*, at the Time of his Death stravit, in his Hands to be administered, except Goods
and,

and Chattels to the Value of 17 l. and the said *Edward* hath not, nor at the Day the exhibiting the Bill of the said *Richard* had in his Hands unadministred any Goods and Chattels which were the said *Anthony's* at the Time of his Death, except Goods and Chattels to the Value of the said 17 l. and he is ready to verify; wherefore he prays Judgment whether the said *Richard* ought to have or maintain his said Action against him except for the said 17 l. and so forth.

And the said *Richard*, as to the said 17 l. which the said *Edward* acknowledges to be in his Hands unadministred, he prays Judgment and the said 17 l. together with his Damages occasioned by the detaining of the said 17 l. to be awarded to him, and so forth. Therefore it is considered, that the said *Richard* should recover against the said *Edward* the said 17 l. of the Goods and Chattels that were of the said *Anthony*: and the said *Edward* in Mercy, and so forth.

Replication as to all besides the said 17 l. and Judgment for the Damages confessed.

And the said *Richard*, as to the Residue of his said Damages, saith, that (notwithstanding any thing alledged above by the said *Edward* in his Plea) he ought not to be precluded from having his said Action against him; because as to the said Plea, by the said *Edward* above-pleaded, he the said *Richard* saith, that at the Day of exhibiting the Bill of the said *Richard*, that is to say, on the 7th Day of May in the 5th Year of the Reign of his present Majesty, the said *Edward* had unadministred in his Hands divers Goods and Chattels, which were the said *Anthony's* at the Time of his Death, to the Value of the Residue of his said Damages, over and above the said Goods and Chattels, to the Value of the said 17 l. whereby he was able to have made

Satis

Satisfaction to the said *Richard*, that is to say, at *Southwark*, in the County aforesaid; and this he prays may be enquired of by the County; and the said *Edward* prays likewise the same. And because it is convenient that in this Case there should be but one Taxation of Costs, if Judgment should happen to be given for the said *Richard*, for the Residue of his Debt and Damages; therefore let the Taxation of Damages stay for not paying the said 17 l. (which the said *Edward* acknowledges to have in his Hands unadministred) till the said Issue above-join'd to be try'd between the said Parties be determin'd. And as to trying that Issue, let there come a Jury thereof before our Sovereign Lord the King at *Westminster*, and so forth.

And the said (Defendant) by *George Wood* his Attorney, comes and defends the Force, Injury, and Damages, and whatever else he ought to defend, where and when the Court will consider thereof; and saith, that the said Plaintiff ought not to have or maintain his said Action thereof against him, because he saith, that at the Time of the said Plaintiff's exhibiting his said Bill, he the said Plaintiff had fully administred all the Goods and Chattels which were of the said D. (meaning the Intestate) then in his Hands unadministred, whereby the said Defendant was not able to pay to the said (Plaintiff) his said Debt (or Damages as the Case is) and this he is ready to verify; wherefore he prays Judgment whether the said (Plaintiff) ought to have or maintain his said Action against him, and so forth.

And the said (Plaintiff) saith, (that notwithstanding any thing alledged by the said

(De-

(Defendant) above in his Plea) he ought not to be precluded from having his said Action against him, because he says, that he the said (Defendant) hath, and at the Time of exhibiting the said Bill, that is to say, on the 23^d Day of *October*, in the 6th Year of the Reign of his said present Majesty, at *Thetford* in the County aforesaid, had divers Goods and Chattels which were of the said (Intestate, naming him) at the Time of his Death then in his Hands unadministred, to the Value of 20 l. whereby he was able to have satisfied the (Plaintiff) for his said Debt and Damages; and this he prays may be enquired of by the Country; and the said (Defendant) does, (or prays) likewise the same, and so forth.

*A Plea of
Tender.*

And the said *Edward*, by *A. B.* his Attorney, comes and defends the Force, Injury, and Damages, and whatever else he ought to defend, where and when the Court will please to take the same into Consideration; and as to the second Promise and Undertaking mentioned in the said Declaration; and also as to 54 l. 14 s. 7 d. part of the 150 l. mentioned in the first Undertaking; in the said Declaration, he saith, he did not undertake in the Manner and Form as the said *John* hath above declared against him; and of this he puts himself upon the Country. And as to 95 l. 5 s. 5 d. Residue of the said 150 l. the said *Edward* says, that the said *John* ought not to recover his Damages by reason of not paying the said 95 l. 5 s. 5 d. because he says, that from the Time of making the said Promise in the said Declaration first mentioned, he the said *Edward* was ready to pay to the said *John* the said 95 l. 5 s. 5 d. and before the exhibiting the said Bill of the said *J.* that is to say,

on.

On the 22d Day of September, in the sixth Year of the Reign of his present Majesty, at the Parish of St. Mary-le-Bow, in the Ward of Cheap, the said *Edward* tender'd Payment to the said *John* of the said 95 l. 5 s. 5 d. but the said *John* then and there refused to receive the same of the said *Edward*, and the said *Edward* is now ready to pay, and brings here into Court the said 95 l. 5 s. 5 d. if the said *John* is willing to receive the same; and this he is ready to verify; wherefore he prays Judgment whether the said *John* ought to have his said Damages against the said *Edward*, by reason of not paying the said 95 l. 5 s. 5 d. and so forth.

Edward Northey.

And the said *John*, as to the said Plea of the said *Edward*, concerning the said first Promise in the said Declaration mentioned; as to the said 95 l. 5 s. 5 d. above pleaded, saith, that notwithstanding any thing by the said *Edward* above alledged in his Plea, he ought not to be precluded from having his said Action thereof against the said *Edward*, because he says, that the said *Edward* did not tender Payment to the said *John* of the said 95 l. 5 s. 5 d. in the Manner and Form as the said *Edward* above in his Plea alledged; and this he prays may be enquired of by the Country; and the said *Edward* prays likewise the same, and so forth.

Replication.

Of making up Issues.

If the Issue is joined the same Term the Declaration is of, then you enter it thus:

London, Be it remembred, that on Monday next after three Weeks of St. Michael, this same Term, comes before our Sovereign Lord the King at Westminster (the Plaintiff) by A.
B.

*Memo-
randum.*

B. his Attorney, and then brought here, into the Court of our said Sovereign Lord the King at *Westminster*, at that Time there, his Bill against (*the Defendant*) in the Custody of the Marshal, and so forth; of a Plea of Debt or Trespass upon the Case (*or as the Nature of the Action is.*) And there are Pledges for the prosecution, (that is to say) *John Doe, Richard Roe*, which said Bill follows in these Words (that is to say)

Somerſet. A. B. complains of C. D. in the Custody of the Marshal of the *Marſhalſea* of our Sovereign Lord the King, being before the King himself, of a Plea that he render to him ten Pounds, which he owes to, and unjustly detains from him; for that whereas (*on to the End of the Declaration.*)

And when the Issue is of the same Term with the Declaration, then the Entry hath no Imparance, but after the Declaration enter the Plea with a new Line thus:

And the said (Defendant) by *George Woodcraft* his Attorney, comes and defends the Force and Injury, and the Damages, and whatever else he ought to defend, where and when the Court will consider thereof, (or take the same into Consideration) and saith, that he did not undertake, &c.

If the Declaration be above four Terms standing, then you must say, Be it remembered that heretofore (that is to say) of the Term of *St. Hillary* in the third Year of the Reign of our Sovereign Lord the King, came, &c.

The Form of making up an Issue of another Term.

Placita.

Of the Term of *St. Hillary*, in the sixth Year of the Reign of our Sovereign Lord *George*

into George the Second, King of Great-Britain, and
King forth.

Somerſet. Be it remembred, that heretofore Memo-
randum.
(that is to ſay) in the Term of the *Holy Tri-*
ty laſt paſt, came *A. B.* before our Sovereign
Lord the King, by *George Woodcraft* his Attor-
ney, and brought here into his Maſteſty's Court,
his Bill againſt *C. D.* (*if there be an al' dict'*,
then put it ſo) otherwiſe called *C. D.* and ſo
forth, in the Cuſtody of the Maſhal, and ſo
forth; of a Plea of Debt or of Treſpaſs and
aſſault or Covenants broken, (*as the Caſe is*).
and there are Pledges for the Proſecution (to
wit) *John Doe* and *Richard Roe*, which ſaid Bill
follows in theſe Words: *Somerſet* (to wit) *A.*
B. complains of *C. D.* in the Cuſtody of the
Maſhal of the *Maſhalſea* of our Sovereign
Lord the King, preſent, before the King him-
ſelf, of a Plea, That he render to him, and ſo
forth, (*ſo go on with the Declaration.*) If in
Caſe, you ſay, For that whereas, and ſo forth.

If the Declaration be of Michaelmas Term, and
the Plea of Hillary Term, and you don't deliver
the Iſſue before Trinity Term, then you make it
an Iſſue of Trinity Term, and ſay, And now here
at this Day (that is to ſay) on Monday, on the
Morrow of the *Holy Trinity* and ſo forth.

And now at this Day (that is to ſay) on *Impar-*
Tuesday next after the *Ocſaves* of *St. Hillary* lance.
(*the firſt Day of the Term the Iſſue is entred of*)
his ſame 'Term, to which Day the ſaid *C.* had
leave to imparle, and then to Anſwer) come
as well the ſaid *A.* by his Attorney, as the ſaid
C. by *J. W.* his Attorney; and the ſame *C.*
defends the Force, Injury, and the Damages,
and whatever elſe he ought to defend, when
and where the Court will pleaſe to conſider
thereof:

* And

* And saith, That he doth not owe the said *A.* the said ten Pounds, or any Part thereof, in Manner and Form as the said *A.* above complains against him: And of this he puts himself upon his Country. And the said *A.* does likewise the same, therefore let there come a Jury thereof before our Sovereign Lord the King at *Westminster*, on Monday next after the Octaves of the Purification of the Blessed Virgin Mary, and who are in no wise related either to the said *A.* the Plaintiff, or to the said *C.* to recognize and make a Jury of the Country between the said Parties; because, as well the said *A.* as the said *C.* (between whom is the Matter in Variance) have thereof submitted themselves to the Jury. The same Day is given to the said Parties here, *and so forth.*

Non
Cul.

* And saith, That he is no wise guilty of the Premises above charged on him, as the said *A.* above complains against him. And of this he puts himself upon his Country; and the said *C.* does likewise the same.

Non Af-
sumpsit.

* And saith, That he did not undertake in Manner and Form as the said *A.* above complains against him.

Non est
Factum.

* And saith, That he ought not to be charged with the said Debt by vertue of the said Bond because he saith, the said Bond is not his Deed. And of this, &c.

I hope, I shall not be condemn'd for Prolixity, if I here make a Digression from the Translation of the Proceedings; to explain what is meant by the Words in the Award of a *Venire*, at the Close of an Issue, viz. *Duo decim, &c. Per Quos, &c. Et qui nec, &c. Ad recogn' &c. Quia tam, &c. Idem Dies datus est partibus prædictis ibidem, &c.*

First

First, As to *Duodecim*, &c.

It must be first understood, that all the Contractions above are the Emphatical Parts of the Sentences in the Writ of *Venire*, which is the next judicial Process after the Issue join'd.

This Issue, when join'd, is the same with that which the Civilians understand by *Causæ Status Compositio*. And by this Issue some Fact or other is affirmed and denied, that the Proof of the one Side or the other, to the subject Matter contain'd in such Issue, will determine the Contest between the Parties. The Persons to determine the Truth to be of one Side or the other, are the Jury, which are to be twelve free and lawful Men; and before the Act of Parliament of the 4th and 5th of Queen Anne, Chap. 16. they were to be *de Vicineto* (*Quia Vicinus*) *facta Vicini præsumitur scire*.

But by that Statute, which was made for preventing Delays, which happen'd by reason of Challenges to the Array, of Panels of Jurors, and to the Polls, for Default of Hundredors: "Every *Venire Facias* for Trial of an Issue in any Action or Suit in any Court of Record at *Westminster*, shall be awarded out of the Body of the proper County where such Issue is triable; but this was not to extend to Appeals of Felony or Murder, or to any Indictment, Presentment, &c. of Treason or Felony, or to any Writ, Bill, Action, or Information upon any Penal Statute.

By the Words *Venire Facias*, it is to be understood, that they are not Compulsive, (that is to say) the Sheriff is not by the *Posse Comitatus* raised on them, to cause or compel them to come; but by Summons and by *Bonos Summotores*, good Summoners, such as may give a credible

credible Testimony to the King's Judges, who are to try the Cause, of the Reason of the not coming of those that make Default ; which Summoners are to notify and shew the Panel to such Persons appointed to be Jurymen the Day of the Return, 42 E. 3. cap. 11. 6 H. 6. cap. 2. and if any Juror be returned, who is not Summoned by the 35 of H. 8. cap. 6. 27 Eliz. cap. 6. the Sheriff is finable ; in Case the Jurors summon'd have no just Excuse, which the Judges will allow, they lose Issues for non Appearance, by the 5 of Eliz. cap. 26. but the Act of God, or other just Reason, shall excuse them.

As to their being Free ;

That is, they were not to be Villeins, which before that Service was antiquated, made such Persons subject to the Directions of their Lords ; therefore they are to be disengaged, that they may use the Freedom of their Reason and Integrity.

As to their being Lawful ;

They are to be such as are under the Notice and Protection of our Laws, and therefore are not to be Aliens, Persons Out-law'd or Excommunicated, or convicted and attainted of Treason, Felony, Perjury, and such like.

I shall not here enumerate the several Causes of Challenges to Jurors, it being not strictly applicable to my present Purpose, which is intended in this particular Digression only to explain what I have above-mention'd.

Besides, an excellent Illustration of that Matter may be seen in *Coke's 1. Inst.* 158. *Bracton* 185. *Fleta*, Book 4. Chap. 8.

But before I conclude my Observation on the Words *Liberos & Legales homines*, I beg leave to shew, that they are not only to be Persons

Persons free from Servitude, and disengaged from their Lords, but ought to be disengag'd from all Passions, and the immediate Corruption of their own Minds, with respect to Hatred and Envy for that Purpose. See the excellent Wisdom of the Common Law; a Law, O! *qui mutata qua forma jam spectatur!*) that provided against our very Inclinations to Wrong.

See the Words of *Fleta*, in Book 4. cap. 8. (*inter alia*) "*Item repellitur* (speaking of a Jurymen) *propter Inimicitiam magnam dum præsentem, secus vero propter Levem, quæ si aliquando fuit modo tamen non est.*" And *Bracton* goes yet farther than *Fleta* on this Occasion to explain this Matter, for he proceeds thus: "*Item Notandum quod Causæ suspitionum quandoque presentes sunt quandoque præteritæ & ea quæ fuit & non est, locum non habet; Quia præsens Causa debet allegari & probari, præterita autem, quia quæ fuit, non est, & Ideo locum non habet, nec probari debet, Item causa non sufficit quæ dudum fuerat nisi præsens fuerit vel recens, scilicet ante hesternum diem vel nudius tertius Jurator & aliquæ partium Inimici erant & licet modo non sunt, tamen illa Causa recusationis probabilis est propter recentiam.*"

Which I paraphrastically translate thus;

A *Jurymen* is to be disabled to try the Cause between such Parties, with either of which he is in great *Enmity*; but otherwise, if it is but a meer Dislike, Disrespect, or a slight Occasion, and it is to be observed, that Causes and Occasions for suspecting the Hearts and Integrity of such *Jurymen*, against whom such challenges are made, are sometimes past, and sometimes present, and therefore the Occasion that is past is not, and hath no Existence, and

and ought not to be proved, and tho' the Occasion is not sufficient to ground the Suspicion of a Man's Integrity unless it be present, or recent; yet if such Occasion had been two or three Days before that Time, that is an Occasion of Enmity, within the Meaning of *Bracton*, and tho', properly speaking, the Occasion is not, but is past, yet that shall be a Foundation for a probable Cause of a Refusal of such Juryman, by reason of its Recency; so that such a tender Regard had the Common Law for Impartiality and equal Distribution of Justice, that such an ill Quality as Enmity is a Disability; nay, both *Bracton* and *Fleta* go yet further, "*Item repellitur si fuerit cum eo pro quo Furare debet Comensalis vel de eius familia.*" So that if a Juryman boarded in the House of either Party, it was a Disability. And that they might not be allured by Rewards, or pliable thro' Necessity, the *Venerabilis* goes on; *Every of which*, (that is, every Juryman) *is to have ten Pounds a Year at least in Lands, Tenements, or Rents, whereby the Truth of the Matter will be the better known.*

By the 27 of Eliz. Cap. 6. Sect. 1. reciting that the Jurors were, before that Statute, to have 40s. a Year Freehold; that Sum was encreased to four Pounds.

And the Value of Money decreasing, and Money itself, in process of Time, increased, that Sum of four Pounds a Year was by the 4th and 5th of William and Mary increased in England to ten Pounds a Year, as it now stands, and in Wales to six Pounds a Year.

Secondly, As to the Words *per Quos*, &c.

Very little need be said on this Occasion, because the Words themselves understood by the *&c.* are sufficiently declarative of their own Propriety, and only shew the Reason of

the Law in appointing that they should have *ten Pounds per Annum*, viz. by which the *Truth* of the Matter may be the better discover'd.

Thirdly, As to the Words, and who neither, &c.

These Words arise likewise from the Words of the *Venire*, *Et qui nec prædicto*, *A.* (the Plaintiff) *nec prædicto C.* (the Defendant) *aliqua affinitate attingunt*, which I translate thus, And who are in no wise related either to the said *A.* (the Plaintiff) or to the said *C.* (the Defendant.)

For I think it is very plain, that this Relation is not confined to a Relation by Consanguinity, but it is a Disability in a Jurymen, if he is any ways related by Marriage; and this Matter is well illustrated in *Coke's first Institutes* 157. a, where it is said, that the Law presumes a Man will shew more Favour to a Kinsman than to a Stranger; and how far soever remote it is, that he is related, it is a Disability to his being a Jurymen; and if the Plaintiff challenges a Juror for kindred to the Defendant it is no Counter Plea to say, that he is of Kindred also to the Plaintiff, tho' he be in a nearer Degree, for the Words of a *Venire* forbid the Juror to be of kin to either Party: And I have read in a Book of good Authority, that the *Provida mens* (of the Law) had this under its Consideration, when it appointed they should be no ways related to the Parties, and that Affinity contracted by Marriage should be a Disability in a Jurymen, because Women having a prevalent Influence over their Husbands, who are naturally inclined to a kind Indulgence to the Fair Sex, and therefore that a Jurymen's Love and Affection for his

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Wife and her Counsels, might not preponderate his Love to *Justice*, and so cause him to forget to do equal Right to the Parties, or at least, that he might not be prevailed on too easily to join in doing Wrong; the Law wisely provided, that such Relation by *Marriage*, should likewise be a Disability in a *Juryman*, to try that Cause between the Parties, to either of which he is so related, as well as if it had been a Relation by *Consanguinity*.

Fourthly, As to the Words, *ad' recognoscendum*, &c.

Which is here rendered into *English*, to make a *Jury* between the said Parties (that is) to recognize of the Matter in Variance; and I beg leave to be a little more particular on this Subject, because, when I have answered a Question ask'd me, concerning the usual Manner of awarding a *Venire*, by saying, *It has been*, to name the most *emphatical Words* of the *Writ*, and then say, &c. to avoid a useless Repetition; It has been objected to me, that there are no such Words in the usual *Writ* of *Venire*, as *recognoscendum* or *recognitionem faciendam* in the *Writ* itself; and that therefore (say they) to use Words in the Award of a *Writ*, that are not Part of the *Writ* itself, is absurd, and the Objection is good, if there was or had not used to have been such Words in the *Writ*; but I apprehend, there is no Absurdity in the awarding a *Venire* in that Manner, tho' no such Words as *recognoscendum* or *recognitionem faciendam* are now in the *Writ* itself.

And, I hope, I shall clear up that Imputation of an Absurdity in the following Manner:

The *Issue* (as said before) being joined, upon a Matter affirmed by one Party and denied by the other, the *Writ* awarded is for the *Jury*
to

to recognize or *recognitionem facere*, (which Words *recognitionem facere*, as my Lord Coke truly says, are somewhat more than *cognitionem facere*, and is deliberately and maturely to consider and take Cognizance) whether the Plaintiff or Defendant says true ; (as for Example) in the *Old Registrum Brevium* (the Fountain of Original and Judicial Process) you have this to Demonstration, where the Issue was upon a *Plene Administravit* the *Venire* runs thus ; *Precipimus tibi quod Venire facias Coram Justiciariis nostris apud Westm' duodecim liberos & legales homines de Vicineto* :

" By which the Truth of the Matter will be the
" better known, and who have no Relation either
" to Plaintiff or Defendant to recognize upon
" their Oaths, whether or no the said J. hath
" administred the several Goods and Chattels
" which were of, and belong'd to the Intestate at
" the Time of his Death, as Executor of the last
" Will and Testament of the said W. after his
" Decease" : then follow the Words *Quia tam*,
" &c. So there is likewise a *Venire* in the *Old Registrum Brevium*, fol. 7. b. Tit. *Judicial Writs* upon an Issue joined on *non est factum*, which runs thus: "*Ad recognoscendum super sacramentum suum si predictum scriptum sit factum predicti J. Dages, sicut prædictus Thomas filius R. dicit vel non. Quia tam, &c.*"

So in *Rastall*, Title *Action upon the Case*, fol. 11. a. in an Action for not repairing a Gutter, the *Venire* runs thus: "*Ad recognoscendum super sacramentum suum si predictus W. F. quandam gutturam inter domum suam & domum præfati W. H. apud E. reparare & sustentare debeat, &c.*" But when a *Venire* was made out on the Award of a *Sex tales*, or a *Decem tales*, that is, to grant to the Plaintiff a Writ to make up his Jury of Twelve by Ten

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or Six others of the Persons there standing about the Court, because Men enough did not appear on the *Venire*; the Form of the Writ then was: "*Precipimus tibi quod Distringas*" (those that had appeared) *Furatores Summo-*
nitos in Curia nostra coram Justiciariis nostris
apud Westmonasterium, inter J. & B. peten-
tes & G. de K. tenentem de placito Terræ per
omnes terras, &c. Ita quod, &c. Et quod, &c.
Coram Justiciariis nostris apud Westmona-
sterium", (and so on to the mandatory Part of the Writ as to the rest; and then the Writ went on in this Form) "*Precipimus tibi quod*
sex tales tam milites quam alios liberos & le-
gales homines de visinetu prædicto in juratam
illam ponas & illos habeas coram Justiciariis
nostris apud Westmonasterium apud præfatum
Terminum, vel coram prædicto Gulielmo, &c.
 (that is the Judge) *prædictis die loco, ad fa-*
ciendum juratam illam Reg. Brev. 2d,
 Part 22.

And I can meet with but one *Venire* in all Rastall's *Entries*, where the Words *ad recognoscendum*, are not therein; which is in Title *Trespas*, fol. 670. a. Column 1st, and that is, a *Venire* after a *Rejoinder in Aid*, which runs thus: "*Rex. Vic. S. Salutem precipimus tibi*
quod Venire facias coram nobis in Crastino as-
censionis domini ubicunque tunc fuerimus in
Anglia viginti & quatuor tam milites quam
alios liberos & legales homines de visinetu de
E. in Comitatu tuo per quos rei veritas melius
sciri poterit & qui nec F. P. Querenti, nec J.
A. de A. in comitatu tuo W. P. ac aliis, &c.
ac E. N. militi T. N. & R. T. Armigeris
de quibus prædicti H. A. & W. H. seperatim
petierunt auxilium quod eis concessum fuit
aliqua affinitate attingunt ad faciendum quan-
dam juratam patriæ inter partes prædictas
 " de

" *de placito transgressionis quia tam* (as in our
" modern Writs of *Venire*.)

And Note, The antient Form of making out all *Venires*, was to contain the Substance of the Issue; and it was *recognoscendum si, &c.* whether what the Plaintiff or Defendant had said was true.

And how the Writs of *Venire* came to be shorten'd, does not appear in the Books; but certain it is, that the Writ is much shorter to say, That the *Jurors* shall come to make a *Jury* between the said Parties, than to say, That the *Jurors* shall come to recognize, as in *Rastal* 11. a. *Whether W. T. ought, and the Tenants of that House Time out of mind have used to repair the Gutter between his House, and the House of W. H.* and yet it is necessary, that the Courts should keep to their Forms, for tho' several Acts of Parliament have cured the Faults of Practicers in Writs of *Venire*, *Habeas Corpora* and *Distingas*, and in several other Instances; yet the Courts have always preserved their Entries pure and unaltered; and the respective Entries, that are now used, were handed down to us almost a thousand Years unsullied and revered by all Ages; and, be it said to the Honour and Justice of the Proceedings at Common Law, that a *Judgment* of the Courts of Law; concerning an Estate of ten thousand Pounds, costs but 2 s. for the Entry, when a *decretal Order*, which is *quasi* a *Judgment*, will sometimes cost 5 l. when the Matter in Dispute is but 20 l.

Fifthly, By the Words *Quia tam, &c.*

What is understood by this *&c.* is no more than to declare, that this Writ issues to summon a sufficient Number to make a *Jury* between the said Parties, *Because as well the De-*

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fendant as the Plaintiff, or as well the Plaintiff as the Defendant (for he is generally named first, who first tenders an Issue) have submitted the Matter to be determined by such Jury.

Sixthly, By the Words *Idem dies datus est partibus prædictis ibidem, &c.* is meant the same Day, that is the Day of the Return of the *Venire*, and is given them by the Court, to be at *Westminster* (or if it be by Original to be *where-ever His Majesty will then be in England*) to proceed further towards the Trial: And whenever the Entry is by *Idem dies datus est*, it is then a Day given to the Parties by the Court.

Demurrers.

The same Course is to be observed in *Demurrers* as in *Issues*, with regard to an *Impar- lance*; (that is to say) if the Demurrer is of the same Term with the Declaration, then there is no *Impar lance*; but the Entry begins as a Plea. Thus:

A Demurrer in Abatement to a Declaration.

And the said C. D. by *George Woodcraft* his Attorney, comes and defends the Force, Injury, and Damage, and whatever else he ought to defend, when and where the Court will consider thereof; (or will take the same into Consideration) and the said C. prays *Judgment* of the said Declaration, because he says, that the said Declaration, and the subject Matter therein contained, are insufficient in Law, for him the said A. to maintain his said *Action* against the said C. to which said Declaration the

the said C. is under no Necessity, or in any wise bound by the Law of the Land to answer; and this he is ready to verify: Whereupon for want of a sufficient Declaration in this Case, the said C. prays Judgment of the said Declaration, and that the same may be quashed, and so forth.

A Joinder in Demurrer.

And the said A. saith, that notwithstanding any thing above alledg'd by the said C. the said Declaration ought not to be quash'd, because he saith, that the said Declaration, and the subject Matter therein contained, are good and sufficient in Law, for him the said A. to maintain his said Action against the said C. which said subject Matter contained in the said Declaration the said A. is ready to verify, and prove in such Manner as the Court shall think fit; and because the said C. hath made no Answer thereto, nor hitherto in any Manner denied the same, the said A. prays Judgment, and that his Damages occasion'd by the Premises may be awarded to him, and so forth.

A Demurrer in Bar to a Declaration.

And the said John saith, that the said Thomas ought not to have his said Action maintained thereon against him, because he saith, that the said Declaration, and the subject Matter therein contained; (as in the former Demurrer to the Words) wherefore he prays Judgment, and that the said Thomas may be precluded from having his said Action thereon against him, and so forth.

A Joinder in Demurrer in Bar.

And the said *Thomas* saith, that (notwithstanding any thing by the said *John* above pleaded or alledged) he ought not to be precluded from having his said *Action* to be maintained against the said *John*, because he saith, that the said *Declaration*, and the subject Matter therein contained ; (as in the former to the Words) wherefore he prays *Judgment*, and his Damages occasion'd by the Premises, may be awarded to him, *and so forth*.

A Demurrer to a Plea in Bar.

And the said *A.* saith, that (notwithstanding any thing above alledg'd by the said *C.* in his *Plea*) he ought not to be precluded from having his said *Action* against him, because he saith, that the said *Plea*, in the Manner and Form as the same is pleaded by the said *C.* and the subject Matter therein contained, are not sufficient in Law to preclude him the said *A.* from having his said *Action* against the said *C.* to which said *Plea*, the said *A.* is not under a Necessity, or in any wise bound by the Law of the Land to answer, and this he is ready to verify ; wherefore, by the Defect of a sufficient *Plea* in this *Particular*, (*or in this Case*) he the said *A.* prays *Judgment*, and that his Damages occasioned by the Premises may be awarded to him, *and so forth*.

A Joinder in Demurrer to a Plea in Bar.

And the said *C.* saith, that the said *Plea*, in the said Manner and Form as the same is above pleaded

pleaded by the said C. and the subject Matter therein contained, are good and sufficient in Law to preclude him the said A. from having his said *Action* to be maintained against the said C.; which said *Plea*, and the subject Matter therein contained, the said C. is ready to verify and prove in such Manner as the Court shall direct; and because the said A. hath not answered the said *Plea*, or in any Manner denied the same, the said C. as before, prays *Judgment*, and that the said A. may be precluded from having his said *Action* thereof against him, *and so forth.*

*A Demurrer to the Plaintiff's
Replication.*

And the said C. saith, that the said *Plea*, in the Manner and Form as the said A. hath pleaded the same by way of *Reply*, and the subject Matter therein contained, are in Law insufficient for him the said A. to have his said *Action* maintained against the said C.; to which the said C. is not under a Necessity, or in any wise by the Law of the Land bound to answer; and this he is ready to verify; wherefore, by reason of the Defect of a sufficient *Replication* in this Particular (*or in this Cause*) the said C. as before, prays *Judgment*, and that the said A. may be precluded from having his said *Action* thereof against him, *and so forth.*

A Demurrer to a Rejoinder.

And the said A. saith, that the said *Plea* of the said C. in the Manner and Form as the said C. hath pleaded the same by way of *Rejoinder*, and the subject Matter therein contained,

tained, are in Law insufficient to preclude the said *A.* from having his said *Action* to be maintained against the said *C.* which said *Plea*, and the subject Matter therein contained, the said *A.* is under no Necessity, or in any wise bound by the Law of the Land to answer, and this he is ready to verify; wherefore, for want of a sufficient *Rejoinder* in this Particular (or in this Cause) the said *A.* as before, prays *Judgment*, and that his *Damages* occasion'd by the Premises may be awarded to him, and so forth.

A Joinder in Demurrer to a Rejoinder.

And the said *C.* saith, that the said *Plea* of him the said *A.* in the Manner and Form as he hath pleaded the same by way of *Rejoinder*, is in Law good and sufficient to preclude the said *A.* from having his said *Action* to be maintained against him the said *C.*; which said *Plea*, and the subject Matter therein contained, he the said *C.* is ready to verify and prove in such Manner as the Court shall direct: And because the said *A.* hath not answered the said *Plea*, or in any Manner denied the same, the said *C.* as before, prays *Judgment*, and that the said *A.* may be precluded from having his said *Action* to be maintained against him, and so forth.

When you enter a *Demurrer* upon the Roll, or deliver the *Demurrer-Book* to the Attorney of the other Side, you must go on after the the *Joinder in Demurrer*, in this Manner:

But because the Court of our said Sovereign Lord the King (or this his said Majesty's Court) now here, are not yet advised what *Judgment*

to give of and concerning the Premises, a Day therefore is given to the said Parties before our said Sovereign Lord the King at *Westminster*, until *Monday next after three Weeks from the Day of St. Michael*, for hearing their Judgment of and concerning the Premises, because that the said Court of our said Sovereign Lord the King, now here, are not yet adviled, and so forth.

A Demurrer to a Declaration in Prohibition.

And the said *William*, by *Thomas Coward* his Attorney, comes and defends the Force, Injury, and Damages, and the Contempt of our Sovereign Lord the King, above laid to his Charge, and whatever else he ought to defend, when and where this Court will consider thereof; and saith, That he is not prosecuting a Suit in the said Court Christian, contrary to a Royal Prohibition to him thereof directed, as the said *Henry Croucher* (who sues in this Cause as well for our Sovereign Lord the King as for himself) doth suppose by his said Declaration; and of this he puts himself upon the Country. And the said *Henry Croucher* thereof does likewise the same. But the said *William Collins*, in order to have a Consultation in this Cause, saith, That the said Declaration, in the Manner and Form as the same is above made and declared, and the subject Matter therein contained, are in Law insufficient for him the said *William Collins* to be precluded from having his said Tythes, demanded of the said *Henry*, in the said Court Christian; and that he is under no Necessity, or bound by the Law of the Land in any Manner, to answer to the said

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said Declaration, in the Manner and Form as the same is made and declared; and this he is ready to verifiy; whereupon, for want of a sufficient Declaration of the said Henry Croucher, (who sues in this Cause as well for our Sovereign Lord the King as for himself) the said William Collins prays Judgment, and that his Majesty's Writ of Consultation may be granted to him, and so forth.

A Joinder in Demurrer.

And the said Henry Croucher (as to the said Plea of the said William Collins above pleaded to have His Majesty's Writ of Consultation) inasmuch as he the said Henry Croucher hath above alledg'd sufficient Matter in Law to preclude the said William Collins from having his said Tythes in the said Court Christian, against the said Henry Croucher, which he is ready to verifiy, which said subject Matter, the said William having not denied, or in any wise answer'd thereto, but hath hitherto altogether refused to admit the same to be verified, prays Judgment, and that the said William may not have His Majesty's Writ of Consultation, and so forth. And because the Court of our said Sovereign Lord the King now here, are willing to be well advised of and upon the Premises, and so forth.

A Demurrer to a Plea in Abatement in a Quare Impedit.

And their said Majesties Attorney General (who prosecutes this Suit for their Majesties) saith, that the said Plea, pleaded as above by the said Henry Bishop of London, and William Lancaster, in order to quash the said Writ, and the

the subject Matter therein contained, are in Law insufficient to quash the said *Writ*; and that he the said *Attorney General* (who prosecutes this Suit for their said Majesties) is under no Necessity, or in any wise bound to make answer to the said *Plea*, in the Manner and Form as the same is pleaded; and this the said *Attorney General* (who prosecutes this Suit for their said Majesties) is ready to verify; whereupon, by the Defect of a sufficient Answer of the said *Bishop* and *William* in this Cause, the said *Attorney General* (who prosecutes this Suit for their said Majesties) prays Judgment that the said *Writ* may be adjudg'd to be good, and prays a *Writ* to the said *Bishop*, and so forth.

Edward Ward.
Thomas Trouer.

A Joinder in Demurrer.

And the said *Henry Bishop* of London and *William Lancaster* say, that the said *Plea* of them the said *Henry Bishop* of London and *William Lancaster* above pleaded, in order to quash the said *Writ*, and the Substance therein contained, are in Law good and sufficient to quash the said *Writ*; whereupon, inasmuch as their said Majesties *Attorney General* hath not answer'd the said *Plea*, or in any Manner denied the same, they the said *Henry Bishop* of London and *William Lancaster* (as before) pray Judgment of the said *Writ* and Declaration, and that the said *Writ* may be quashed, and so forth.

A Demurrer to a Bar to a Cognizance for Damage fezant.

And the said *William Clarke* and *Robert Varnham* say, that the said *Plea* of the said *John*, above pleaded in *Bar*, to the said *Cognizance* is in Law insufficient to preclude them the said *William* and *Robert* from justly acknowledging the taking of the said *Sheep*, as Bailiffs to the said *Daniel*, Earl of *Nottingham*, in the Place where the same are supposed to have been taken, and that they are under no Necessity, or in any wise bound by the Law of the Land to answer to the said *Plea*, in the Manner and Form as the same is pleaded, and this they are ready to verify; whereupon, for want of a sufficient *Plea* of the said *John* in this Cause, they the said *William* and *Robert* pray Judgment, and a Return of the said *Sheep*, together with their *Damages* occasioned by the Premises to be awarded to them, and so forth.

Plaintiff joins in Demurrer.

And the said *John*, inasmuch as he hath above alledg'd sufficient subject Matter in Law for him the said *John* to have his Action to be maintained against the said *William* and *Robert* (which said subject Matter they the said *William* and *Robert* have not denied, or in any Manner answered the same, but altogether refuse to admit the verifying thereof) prays Judgment, and his *Damages* occasion'd by the taking and unjustly detaining of the said *Sheep* to be awarded to him, and so forth.

A Demurrer to a Scire Facias.

And the said *Henry* saith, that the said Writ of *Scire Facias*, in the Manner and Form as the same is prosecuted and sued out of this Court, and the subject Matter therein contained, are in Law insufficient for them the said *Matthew, Richard, Hercules, and Peter* to have their Execution thereupon to be maintain'd against the said *Henry*, for the said one hundred and sixty Pounds, and that he is under no Necessity, or by the Law of the Land bound to answer thereto in the Manner and Form as the same is made; and for Causes of Demurrer in Law, according to the Form of the Statute in such Case made and provided, the said *Henry* shews to the Court these following Reasons: (that is to say) *Inasmuch* as it doth not appear by the said Writ of *Fieri Facias*, that the said *Henry Mildmay* had at any Time in his Hands, or in the Hands of his Officers, the said one hundred and sixty Pounds, or any Part thereof, by Vertue of His Majesty's Writ of *Fieri Facias* above specified in the said Writ of *Scire Facias*; and for that no Execution ought to Issue against the said *Henry Mildmay* upon the Return of the Writ of *Scire Facias* above-mentioned; whereupon he prays Judgment of the said Writ of *Scire Facias*, and that the said *Matthew, Richard, Hercules, and Peter* may be precluded from having their said Execution against him, and so forth.

A Joinder in Demurrer.

And the said *Matthew, Richard, Hercules, and Peter*, inasmuch as they have above alledg'd sufficient Matter in Law to have their said Execution against the said *Henry*, for the said 160*l.* in Form aforesaid, which they are ready

ready to verify, which said subject Matter the said Henry hath not denied, or in any Manner answered thereto; but hath hitherto altogether refused to admit the same to be verified, they pray Judgment as before, and that their said Execution for the said 160 l. against the said Henry may be awarded to them, and so forth.

The *Scire Facias*, to which the Demurrer was as above, was a *Scire Facias* against the Sheriff of Southampton, setting forth that a Writ of *Fieri Facias* had been sued out by the Plaintiffs against one Sydenham to levy a Debt of 200 l. with Costs, directed to the Defendants; and that the Sheriff made a Return to the same, that he had made a Warrant to his Bailiffs, who had taken the Goods of Sydenham by virtue thereof to the Value of 160 l. and that they were rescued out of their Custody, and that Sydenham had no other Goods; and the Plaintiffs suggested likewise, that the said Sum had not been paid to them, upon which they pray to have Execution, and the Plaintiff had Judgment in the Common-Pleas, and the same was affirmed in the King's-Bench; and the Authorities to warrant this Judgment are as follow; 2 Danvers 495. Pl. 17. 2 Keb. 789, 821. 1 Mod. 246. 6 Mod. 291. 2 Saund. 47. 1 Roll's Abr. 498. Pl. 17, 302. Pl. 14. 2 Roll's Reports 57. Mard. 13. Cro. Ja. 514. Godb. 276. Hob. 206, 219. Show. 103. Yelv. 44.

Of Trials.

Before you insert the Memorandum, of which sufficient has been said before, you begin your Record of *Nisi Prius* with a *Placita*, thus:

Pleas

Pleas before our Sovereign Lord the King at *Westminster*, of the Term of *St. Hillary*, in the sixth Year of the Reign of our Sovereign Lord George the Second, King of *Great-Britain, France and Ireland*, Defender of the Faith, and so forth.

Then your Issue comes next, after which you insert another *Placita*, the same with the former, unless the Trial of the Cause is postponed to another Term than that which your *Placita* is of; for in such Case your *Placita* must be of the same Term that the Case is to be tried in.

A Jurata for a Cause to be tried in London within the Term.

London. A Jury between A. B. by his Attorney, Plaintiff, and C. D. of a Plea of *Trespass* (for *Trespass* on the Case as the Action is) is respited before our Sovereign Lord the King at *Westminster*, until *Friday next after the Octaves of St. Martin*, unless His Majesty's faithful and well-beloved Robert Lord Raymond, his said Majesty's Chief Justice, assigned to hold Pleas in his said Majesty's Court, before the said King himself, should come before for the Default of Jurors, on *Thursday next after the Octaves of Saint Martin*.

If after Term, then at the Day of the Sitings.

On *Thursday the thirtieth Day of November* at *Guildhall, London*, according to the Form of the Statute in such Case made and provided; therefore let the Sheriffs have their Bodies,
and

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and so forth. The same Day is given to the said Parties there, *and so forth.*

If your Proceedings are by *Original*, then the Return of the *Distingas* must be awarded of a general Return (that is to say) *on the Octaves of St. Martin.*

If your Jurata be for a Trial at the *Affizes*, then you must say :

Unless his present Majesty's Justices, appointed to hold the *Affizes* in the said County, should come before on (the Day that the *Affizes* are held) at the *Castle of Norwich*, according to the Form of the Statute in such Case made and provided, for the Default of Jurors; therefore let the Sheriff have their Bodies, *and so forth.* The same Day is given to the said Parties there, *and so forth.* And be it known, that His Majesty's Writ for that Purpose, *on Tuesday next after the Octaves of the Purification of the blessed Virgin Mary*, this same Term before our Sovereign Lord the King at *Westminster*, is to be delivered of Record to the Deputy Sheriff (or Under Sheriff) of the County aforesaid, to be executed in due Form of Law under a Peril attending the Neglect thereof.

The Form of a Jurata in Middlesex.

If your Action be in *Middlesex*, then say :

Unless his said Majesty's faithful and well-beloved Robert Lord Raymond, his said Majesty's Chief Justice, assigned to hold Pleas in the Court of our said Sovereign Lord the King, before the King himself at *Westminster*, in the said County of *Middlesex*, in the great Hall of
Pleas,

Pleas, according to the Form of the Statute, &c.

A Venire Facias.

George the Second, &c. to the Skeriff's of London, Greeting: We command you, that you cause to come before us at *Westminster*, on *Thursday* next after three Weeks from the Day of the *Holy Trinity*, Twelve free and lawful Men of the Body of your County, (every one of which to have ten Pounds a Year, at least, of Lands, Tenements, or Rents) by whom the Truth of the Matter will be the better known; and who are in no wise related either to *A. B. the Plaintiff*, or to *C. D. the Defendant*, to make a certain *Jury* between the Parties aforesaid, of a *Plea of Trespass*, (or as the Action is) *because as well* the same *C. D. (the Defendant)* as the aforesaid *A. B. (the Plaintiff)* between whom the Contention is, have thereof submitted themselves to the *Jury*; and have you there the Names of the *Jury*, and this Writ. Witness *Robert Lord Raymond* at *Westminster*, the twelfth Day of *February*, in the fifth Year of our Reign.

Ventris.

A Distringas.

George the Second, &c. to the Sberiff of Somerset, Greeting: We command you, that you diltrain the several Persons mentioned in the Panel hereto annexed, Jurors summon'd in our Court before us, between *A. B. Plaintiff*, and *C. D.* by all their Lands and Chattels in your Bailiwick; so that neither they, or any one of them, or any one for them, meddle therewith, until you have another Precept from us, and that you answer for the Issues of the same to us, so that you have

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have their Bodies before us at *Westminster*, on Monday next after three Weeks from the Day of *St. Michael*, or before our beloved and faithful *Robert Lord Raymond*, our Chief Justice assigned to hold Pleas in our Court before us, (if he should come before that Time, that is to say, on *Wednesday* the third Day of *July* at *Guildhall, London*, by Force of the Statute in such Case made and provided) to make a Jury of the County, between the said Parties of a Plea of *Trespas* (or *Trespas upon the Case*, as the Case is) and hear their Judgment for their many Defaults; and have you there the Names of that Jury and this Writ. Witness *Robert Lord Raymond*, &c.

*Subpoena for the Sittings in London
or Middlesex.*

George the Second, &c. to *John Doe* and *Richard Roe*, *John Denn* and *Richard Fenn*. Greeting. We command you, and every of you, firmly enjoining you, that (laying aside all and all manner of Busineses and Excuses whatsoever) you and every of you be before our faithful and well-beloved *Robert Lord Raymond* our Chief Justice appointed to hold Pleas in our Court before us, on *Thursday* the thirtieth Day of *November* next following at *Guildhall, London*, to testify all and singular those things which you, or either of you shall know, in a certain Action pending undetermined between *A. B.* Plaintiff, and *C. D.* Defendant, of a Plea of *Trespas* upon the Case (or *Trespas*, or of Debt, as the Case is) and to be tried at that Day by a Jury of the County. And this do you and every of you in no wise omit, under the Penalty of one hundred Pounds, of you and every of you. Witness *Robert Lord Raymond* at

at Westminster, the twenty-eighth Day of June,
in the sixth Year of our Reign.

A Ticket to be delivered to the Witnesses, shewing them the Writ of Subpoena under the Seal of the Court.

Mr. A. B.

By Vertue of a Writ of *Subpoena* to you directed, and herewith shewn unto you, you are personally to be and appear before His Majesty's Justices of Assize on _____ next, being the _____ Day of _____ at _____ of the Clock in the _____ noon of the same Day, at the Court then to be holden at _____, to testify the Truth, according to your Knowledge, in a certain Cause now depending, and then there to be tried between A. B. Plaintiff and C. D. Defendant, in a Plea of _____ on the Part of _____ and hereof you are not to fail on pain of one hundred Pounds. Dated the _____ Day of _____ in the Fifth Year of the Reign of our Sovereign Lord George the Second, by the Grace of God of Great-Britain, France, and Ireland, King, Defender of the Faith, and so forth, and in the Year of our Lord 1732.

A Subpoena for Witnesses at the Assizes.

George the Second, &c. To A. C. D. E. F. G. and J. K. Greeting; We command you and every of you, firmly enjoining you (that laying aside all and all manner of Busineses and
Excuses

The Attorney's

Excuses whatsoever) you and every of you be in your proper Persons before our Justices at the Assizes appointed to be held in the County of *Somerset*, on *Wednesday* the twenty-sixth Day of *July* next following, at in the County aforesaid, to testify all and singular those things which ye or either of you shall know in a certain Action now depending and undetermined in our Court before us, between *A. B.* Plaintiff, and *C. D.* of a Plea of *Trespas*, (or as the Action is) and on that Day to be tried by a Jury of the County, and this ye and every of you are in no wise to omit, under the Penalty of one hundred Pounds for every of you. Witness *Robert Lord Raymond*, &c.

The Postea where the Defendant appears and makes Default.

As now there will be no tales de circumstantibus, for since the late Act of Parliament there will scarce be any want of Jurors, therefore the Form of a Postea, afterwards (that is to say) on the Day and at the Place within mentioned, before the within written *Robert Lord Raymond*, (there being associated unto him *Capel Billinsley*, Esq; according to the Form of the Statute in that Case made and provided) came as well the within written *A. B.* as the within written *C. D.* by their Attornies within contained (if the Defendant makes Default, then it is thus) comes the within named *A. B.* by his Attorney within contained, and the within named *C. D.* altho' solemnly required, came not, but made Default; therefore let the Jury, whereof mention is made, be accepted of against him thro' his Default, and the Jurors of that Jury
according to the late Act of Parliament may be seen at the End of the Proceedings in the King's-Bench in the Appendix.

Jury being summon'd, some of them (that is to say) *E. G. H.* (reciting the Names of so many of the Jury of the principal Panel, which is annexed to your Distringas, as you shall find there to have been sworn) come and are sworn upon that Jury (and because the Residue of the Jurors of the same Jury do not appear, therefore other Persons of those standing by the Court, by the Sheriffs of the County aforesaid, at the Request of the said *A.* and by the Command of the said Chief Justice (if in London or Middlesex; if at the Assizes then) by the Command of the said Justices, are now newly set down, whose Names are affiled in the within written Panel, according to the Form of the Statute in that Case made and provided; which said Jurors, so newly set down, (that is to say) *T. K.* (and so naming the rest of the Talemen) being required, came, who together with the said other Jurors, before impanelled and sworn to declare the Truth of the within Contents, being elected, tried, and sworn, upon their Oaths declare, that the said *C.* did not undertake, (or is not guilty of the Premises within charged on him) or did not pay to the said *A.* the within mentioned 100 l. upon the within mentioned 10th Day of October; or that the within written Bond for the within mentioned 100 l. in the Declaration within written, is not the Deed of the said *C.* (or as the Issue is) in the Manner and Form as the said *A.* has within complained against him; and they assess the Damages of the said *A. B.* by reason of the not performing the Promises and Undertakings within written, besides his *Expences and Costs* laid out by him about his prosecuting this Cause, to 100 l. and for his *Expences and Costs* to 53 s. 4 d. therefore it is consider'd, that the said *A.* should recover against the said *C.*

The Attorney's

C. the said *Damages*, by the said Jury assessed in Form aforesaid, and also 11 l. 6 s. 8 d. for his Expences and Costs, by his said Majesty's Court now here, and with the Consent of the said C. awarded to him by way of Increase, which said *Damages* in the whole, amount to 114 l. and the said C. shall remain at the Mercy, and so forth.

* *Note*, The Meaning of the Juries being accepted of thro' the Default of the Defendant, may be seen among the Proceedings in the *Common Pleas*.

The Award of a Venire as to trying one of the Issues, and as to the Demurrer, the Entry of the Continuances, and as to the Plea of another of the Defendant's Continuances by Dies dat. and then a Return of the Writs of Venire and Distringas, with divers other Continuances.

Therefore as to trying the said Issue joined between the said J. I. now Plaintiff, and the said J. M. H. W. and T. R. in Form aforesaid, the Sheriff is commanded that he cause to come before our Sovereign Lord the King, in three Weeks from the Feast Day of *Easter* next to come, (where-ever his said Majesty shall then be in *England*) twelve free and lawful Men of the Body of his County, (or of his Bailiwick) every one of which to have ten Pounds a Year at least in Lands, Tenements or Rents, whereby the Truth of the Matter might the better be known; and which are no ways related either to the said J. I. the now Plaintiff, or to the said J. M. H. W. and T. R. to recognize upon their Oaths the full Truth of and concerning the Premises, and make a Jury between the said Parties; the same Day is given to the said Parties there, and so forth.

And

And as to the Matter in Law, whereof as well the said *J. I.* the now Plaintiff, as the said *R. D.* and *A. O.* have submitted themselves to the Judgment of the Court here; a Day is given to the said Parties, as well to the said *J. I.* the now Plaintiff, as to the said *R. D.* and *A. O.* before our said Sovereign Lord the King now here, in three Weeks *from the said Day of Easter next to come, wheresoever, and so forth*, for taking their Inquest thereof, because the Court here are not thereof as yet, *and so forth*; and as to the Plea of the said *R. I.* above pleaded, the said *J. I.* the now Plaintiff prays leave to imparle thereto until the same Time, before our said Sovereign Lord the King, *wheresoever, and so forth*; and he hath such Day, *and so forth*; the same Day is given to the said *R. J.* *and so forth*; at which Day came before our said Sovereign Lord the King at *Westminster*, the said Parties in their proper Persons: And as to trying the said Issue joined between the said *J. I.* now Plaintiff, and the said *J. M. H. W.* and *T. R.* in the Manner as above, the Sheriff returneth his said Writ in all things served and executed, together with a Panel of the Names of the Jury annexed to the said Writ; none of which, *and so forth*; therefore the Sheriff is commanded, that he have the Bodies of them before our Sovereign Lord the King *on the Morrow of the Holy Trinity, wheresoever, and so forth*; and distrain them by all, *and so forth*; and that of the Issues, *and so forth*; so that he may have their Bodies before our said Sovereign Lord the King *on the Morrow of the Holy Trinity, wheresoever, and so forth*; to recognize in Form aforesaid, the same Day is given to the said Parties there, *and so forth*. And as to the Matter in Law, whereof as well the said *J. I.* the now Plaintiff,

tiff, as the said R. D. and A. O. have submitted themselves to the Judgment of the Court, because the Court of our said Sovereign Lord the King here, are not advised of giving their Judgment of and upon the Premises submitted to the Judgment of the Court, therefore a further Day is given as well to the said J. I. the now Plaintiff, as to the said R. and A. O. before our said Sovereign Lord the King, till *on the Morrow of the Holy Trinity, wheresoever, and so forth*; for hearing their Judgment of and upon the Premises, because that the Court of our said Sovereign Lord the King here are not yet thereof, *and so forth*. And as to the said Plea of the said *Richard Jackson* above pleaded, the said J. I. the now Plaintiff, prays further leave to appear before our said Sovereign Lord the King, until the Time aforesaid, *wheresoever, and so forth*.

The Entry of a View before Trial.

The Names of the Jury are newly set down in the Panel within written, and are filled up according to the Form of the Statute in that Case made and provided; and the Jury so newly set down before L. R. *and so forth*, being summoned likewise came, who, together with the said other Jurymen before to this purpose impanelled, were elected, impanelled, and sworn; and because the Sheriff had not Jurymen to see the Place in Question, according to the Direction of the Writ within specified, and because it seems it is convenient to the said Parties, that a View of the Place in Question

*As the
Form of a
View will*

by the late Act of Parliament for Regulation of Juries be alter'd, I have inserted one in the Appendix to the Proceedings in the King's-Bench, which I apprehend to be pursuant to the Intention of that Act of Parliament.

tion by more Jurymen should be further had before the Trial of the said Issue ; therefore *A. S.* the last Jurymen afore said, by the Command of the said Justice, and by the Consent of the said Parties, is withdrawn from the said Panel, and the rest of the said Jurors are now discharged from giving any Verdict upon the within Contents, therefore the said Jury are respited here, until three Weeks from the Day of the *Holy Trinity*, thro' the Default of Jurymen, because none came, therefore the Sheriff is (as before) commanded, that he have their Bodies, and appoint ten such, *and so forth* ; on which Day came as well the said *Robert* as the said *Mary* and *William*, by their said Attornies, and the Sheriff (that is to say) *R. N. Esq;* hath made a Return hither, that as to distraining *A. Q.* another Jurymen named in the Writ of our said Sovereign Lord the King to him directed, that Writ was so lately delivered to him, that he could not execute the same, by reason of the shortness of the Time. But as to putting of ten such, whereof Mention is made in the same Writ, the Sheriff now makes a Return here, that Execution thereof appears in a certain Schedule thereof annexed to the said Writ, in which Schedule is contained the Panel of the Names of the ten Jurymen of which none, *and so forth* ; therefore the Jury afore said are further respited here, until three Weeks from the Day of *St. Michael*, unless the Justices of our said Sovereign Lord the King, at the Assizes appointed to be held in the said County by force of the Statute, *and so forth*, should come before on *Monday* the sixth Day of *August*, at the Castle of *Exeter* in the said County, by the Default of Jurymen, *and so forth*, and that the Sheriff should distrain the said

The Attorney's

Jurymen by all their Lands, Chattels, *and so forth*, and that of the Issues, *and so forth*; and that they be here unless, *and so forth*; to make up the said Jury, *and so forth*; and now here at this Day came the said Robert, by his Attorney, and the said Justices, *and so forth*, sent hither their Record in these Words, Afterwards (here recite the *Postea* till you come to these Words) came and are sworn upon the Jury; and because the Residue of the Jurymen of the same Jury did not appear, therefore another of the Persons standing by the Court by the Sheriff of the County aforesaid, for that Purpose elected at the Request of the said R. B. and by the Command of the said Justices is newly set down, whose Name is affiled in the within written Panel, according to the Form of the Statute in that Case made and provided; and the Jurymen so newly appointed (that is to say) *A. S.* being required, likewise came, who being elected, impanelled and sworn, together with the other Jurymen aforesaid, before to this Purpose impanelled, to declare the Truth of the within Contents, *and so forth*, say upon their Oaths, &c.

A Verdict in Trespass and Ejectment upon not guilty.

Say upon their Oaths, that the said *A.* is guilty of the Trespass and Ejectment within written in the Manner and Form as the said *C.* doth within complain against him; and they assess the Damages of the said *C.* by reason thereof, besides his Expences and Costs laid out by him about his Suit in this behalf to twelve Pence, and for his Expences and Costs to forty-three Shillings and four Pence; therefore, &c.

*A Postea upon an Issue on Solvit
ad Diem.*

Say upon their Oaths, that the within written *J. S.* in his Life-time, after the within mentioned tenth Day of *December*, mentioned in the within written Condition, and before the Day of the exhibiting the within written Bill, did not pay to the within named *P. S.* the within mentioned Sum of one hundred Pounds, and all Interest due for the same, as the said *L.* hath within alledged in his Plea thereof; and they assess the Damages of the said *G.* by reason thereof, besides his Expences and Costs laid out by him about his Suit, in this Cause; (or this Behalf) to twelve Pence, and for his Expences and Costs twenty Shillings; therefore, &c.

*A Verdict for the Plaintiff upon an
Issue on Plene administravit.*

Say upon their Oaths, that the said *A.* hath; and at the Day of exhibiting the within written Bill of the said *C.* (that is to say) on the twentieth Day of *March*, 1732. had divers Goods and Chattels in her Hands unadministred, which were of the within named *B.* at the Time of his Death, to the Value of the Debt within specified, whereof she might have made Satisfaction to the said *C.* for his said Debt, (that is to say) at *Thetford* in the County aforesaid; and they assess the Damages of the said *A.* by reason thereof, besides his Expences and Costs laid out by him about his Suit in this Cause, to two Pence, and for his Expences and Costs to forty Shillings; therefore, &c.

*The Attorney's**A Verdict for the Defendant upon
Plene administravit.*

They say upon their Oaths, that the within specified *John*, at the Time of exhibiting the Bill of the said *James* within contained, hath fully administrated all the Goods and Chattels in his Hands unadministrated, which were of the said *Isaac* at the Time of his Death; and that he the said *John* hath not, nor at the Day of exhibiting the within specified Bill, or at any Time afterwards, had any Goods or Chattels in his Hands unadministrated, which were of the said *Isaac* at the Time of his Death, whereof he could pay the within specified Debt, or any Part thereof, to the said *James*, as he the said *John*, in his within written Bar, (or Plea) hath alledged by way of Defence, therefore, &c.

*For the Plaintiff upon an Issue of
Non est Factum.*

Say upon their Oaths, that the within mentioned Writing Obligatory, is the Deed of the within named *John*, as the within written *James* hath declared against the said *John*; and they assess the Damages of the within named *James*, by reason of detaining his said Debt, besides his Expences and Costs by him expended about his Suit in this Cause to twelve Pence, and for his Expences and Costs to twenty Shillings: therefore, &c.

*The Entry where a Furor is with-
drawn.*

Elected, tried, and sworn, to declare the Truth, whereupon, for certain Reasons exciting

citing as well the said Justices, as the said Parties, the said N. M. one of the within mentioned Jury, is withdrawn from the Panel, and the rest of the Jury are altogether discharged from giving any Verdict of and concerning the within Premisses, &c.

In Replevin on an Issue on non cepit and Tender.

Electd, tried, and sworn, to declare the Truth as to the taking and unjustly detaining of one black Gelding, Parcel of the within written three Geldings, within supposed to have been taken and unjustly detained by him the said *John*, in the first Issue within mentioned, joined between the said Parties, say upon their Oaths, that the said *John* did neither take or detain the said black Gelding, as the said *J.* hath within alledged in pleading thereto ; and as to the within mentioned grey Gelding, specified in the second Issue joined between the said Parties, they further say upon their Oaths, that the said *James* did never offer to pay to the said *John* the within mentioned six Pounds and thirteen Shillings, mentioned in the within written Plea, as the said *James* hath alledged by way of Rejoinder thereto ; therefore, &c.

A Verdict in Replevin for the Defendant.

Say upon their Oaths, that the said *John*, on the within mentioned twentieth Day of *February*, in the within written fourth Year of the Reign of our said Sovereign Lord the King, within specified in the Declaration of the said *Joseph* and *William*, did not of his

own proper Injury, or without any such Cause alledged by the said *Henry*, in his within written Avowry, in the within mentioned Place in which, *and so forth*, take the Goods and Chattels within contained of the said *Joseph* and *William* within specified, and detain them until, *and so forth*; as the said *John* hath within alledged in his Defence; therefore, &c.

A Non prof. at the Assizes in Trespas against an Officer.

Elected, tried, and sworn, it was given in Evidence to the said Jury, on the Part of *J. M. W. G.* and *T. H.* that the said *J. M.* was an Headborough, and that, that which he did was in Execution of his Office as Headborough, and that, that which *W. G.* and *T. H.* did was in Aid and Assistance of the said *J. M.* and by his Command; upon which, the said Jury went from the Bar, to consult in giving their Verdict thereof, and thereupon it was consulted and agreed amongst themselves to give in their Verdict, and for that Purpose they came back here again to the Bar; whereupon the said *T. C.* altho' solemnly required, did not come, nor further prosecute his within written Bill, against the said *J. M. W. G.* and *T. H.*; therefore, &c.

A Verdict in Assault and false Imprisonment, Part for the Plaintiff and Part for the Defendant.

As to the Issue joined between the said *John* and the said *James*, declare upon their Oaths, that the said *James* is not guilty of the Premises within charged upon him, as the said
James

James hath within alledged in making his Defence thereto: And as to the first Issue joined between the said *John* and the said *Francis* (that is to say) as to the coming with Force and Arms, and whatsoever else, that is, against the Peace of our Sovereign Lord the King that now is; and also as to the whole Trespass within mentioned, except the assaulting, beating, ill-treating, taking, and Imprisonment, and in Prison detaining and keeping of the said *John*, by the Space of eight Hours within mentioned, Part of the within mentioned twenty four Hours, the said Jury, upon their Oaths, further declare, that the said *Francis* is guilty in the Manner and Form as the said *John* within complains against him; and as to the second Issue within mentioned, joined between the said *John* and the said *Francis*, (that is to say) as to the assaulting, beating, ill-treating, taking, and imprisoning, and in Prison detaining and keeping of the said *John* by the said Space of eight Hours, the said Jury, upon their Oaths, further declare, That the said *Francis*, the Day and Year specified in the Declaration within written, of his own proper Injury, without any such Cause as by him the said *Francis* is within pretended in his Plea, in the Parish of *St. Sepulchres*, in the within specified County, made an Assault upon the said *John*, and beat, ill-treated, took, imprisoned, and in Prison there detained and kept the said *John*, in the Manner and Form as the said *John* doth within complain against him; and they assess the Damages of the said *John* by reason thereof, besides his Expences and Cost expended by him about his Suit in this Cause, to forty Shillings, and for his Expences and Costs to twenty Shillings; therefore, &c.

Et;

Another

*Another in Case for continuing the
stopping up of the Plaintiff's Lights.*

Chosen, tried, and sworn, as to the continuing the Building within mentioned, in the within written Declaration, to be by the said *Joseph* built and erected in the Issue joined between the within mentioned Parties, declare upon their Oaths, that the said *Joseph* is Guilty in the Manner and Form as the said *Simon* within complains against him: And assess the Damages of the said *Simon*, by reason of continuing the said Building last mentioned, by the said *Joseph* within mentioned to be built and erected, besides his *Expences* and *Costs* expended by him in his Suit in this Cause, to one hundred Pounds, and for his *Expences* and *Costs* to twenty Shillings: And as to the continuing the Building or Edifice within specified in the said Declaration, first within mentioned to be built and erected by the said *Joseph*: If it should happen Judgment upon the within written Demurrer in Law thereto, whereof the said Parties have submitted themselves to the Judgment of the Court, should be given for the said *Simon* against the said *Joseph*, then the said Jury do assess the Damages of the said *Simon* against the said *Joseph*, by Reason of the Continuation of the said Edifice first above-mentioned to be erected and built by the said *Joseph*, besides his Damages and *Costs* aforesaid, above put in Issue by him for the Continuance of the said last-mentioned Edifice, erected and built as aforesaid, to one Penny; therefore, &c.

Of Judgments by Default.

If instead of a Trial there is Judgment by Default, the Manner of entering the Judgment is thus; over your Entry you say thus:

ALSO of this present Trinity Term. Witness Robert Lord Raymond.

Then you enter the Warrants of Attorney thus:

Somerset. A. B. appoints in his stead J. W. his Attorney, against C. D. (if there is an al^d dictⁿ then say) otherwise called, &c. in an Action of Debt.

For the Defendant.

Somerset. C. D. appoints in his stead G. H. his Attorney, against the said A. in the said Action.

Then after your Declaration is entered with a proper *Memorandum*, either of the same Term or of another, then thus:

Impar lance.

And now here at this Day, (that is to say) on *Wednesday* next after three Weeks from the Day of *St. Michael* this same Term, (until which Day the said C. D. had leave to imparle, and then to answer) came before our Sovereign Lord the King at *Westminster* A. B. by his said Attorney, and the said C. D. altho^{gh} solemnly required, came not, nor says any Thing in Bar or Denial of the said Action of the said A. whereby the said A. remains un-
defended

Nil dicit in Debt. defended therein by the said C. therefore it is considered, that the said A. should recover against the said C. his said Debt, and also thirty-three Shillings and four Pence, as well for his Damages occasioned by the detaining of his said Debt, as for his Expences and Costs laid out by him about his Suit in this Cause, awarded by this Court to the said A. with his Consent, and the said C. at ‡ the Mercy, and so forth.

If it be of the same Term then say,

Note, this &c. is not Part of the Entry, but only to avoid Repetition, therefore I refer you to the Form of a Plea for the rest.

** The last Day of the Term.*
Nil dicit in Case.

And the said C. by J. C. his Attorney, comes and defends the Force and Injury, &c. and the said A. prays that the said C. may answer to the said Declaration of him the said A. whereupon the said C. hath till * Monday next after fifteen Days from the Day of St. Martin given to him, by his said Majesty's Court here, to answer to the said Bill of the said A. and the said C. altho' solemnly required to answer thereto, came not, nor did the said C. say any Thing in Bar or Denial of the said Action of the said A. whereby the said A. remains therein undefended by the said C. for which Cause the said A. ought to recover against the said C. his Damages sustained by him by Reason of the Premises; but because his said Majesty's Court now here, know not what Damages the said A. hath sustained in this Suit by Reason of the Premises, therefore the Sheriff is commanded, that he diligently enquire, by the Oath of twelve honest and lawful Men of his Bailiwick, what Damages the said A. hath sustained, as well by Reason of the Premises,

as

† For the understanding the Meaning of the Defendant's being at the Mercy, and so forth, see among the Proceedings in the Common Pleas.

as for his Expences and Costs laid out by him about his Suit in this Cause; and that he send the said Inquisition, which he shall take thereon, to our Sovereign Lord the King at *Westminster*, on *Wednesday* next after three Weeks of *St. Michael*, under his (or their) Seal (*according as there are one or two Sheriffs*) and the Seals of those, by whose Oaths he shall take such Inquisition, together with his Majesty's Writ to him (or them) therefore directed: The same Day is given to the said *A.* there, and so forth.

Non sum informatus in Case.

And the said *C.* by *J. C.* his Attorney, comes and defends the Force and Injury, &c. and the said *A.* prays, that the said *C.* may answer to his the said *A.*'s Declaration; whereupon the said Attorney says, that he is not instructed by the said *C.* his Client, to give any Answer for him to the said *A.* in the Premises, nor doth he say any Thing in Bar or Denial of the said *A.*'s Action; whereby the said *A.* remains therein undefended by the said *C.* for which Cause the said *A.* ought to recover, &c.

The same is likewise *in Case* upon an *Affumpsit*, only when you come to the Words *the said A. ought to recover*, you say, instead of *his Debt, his Damages*.

Against the said *C.* by Reason of his not performing his said Promises and Undertakings: But because his said Majesty's Court, now here before the King himself, know not what Damages, &c.

If in Trespass, then, by Reason of the Trespass aforesaid, or Trespass and Assault, as the Case is.

Non sum Informatus to the first Promise, and Issue on the second, with a Unica Taxatio.

And the said C. by Fotherby Baker his Attorney, comes and defends the Force, Injury, and Damages, and whatever else he ought to defend, when and where the Court will consider thereof (*or take the same into Consideration*) and as to the first Promise and Undertaking mentioned in the said Declaration, the said Attorney saith, that he is not instructed by his Client, the Defendant, to give any Answer for the said C. to the Complaint of the said A. and says nothing more thereto, whereby the said A. remains undefended by the said C.; wherefore it is considered, that the said A. ought to recover against the said C. his said Damages occasioned by the Nonperformance of the said first Promise, mentioned in the said Declaration; and as to the said second Promise, mentioned in the said Declaration, the said C. saith, that he did not undertake (*or made no such Promise*) in the Manner and Form as the said A. hath above complained against him; and of this he puts himself upon the Country, and the said A. doth likewise the same: And because it is convenient and necessary, that there should be only one Taxation of the Damages occasioned by reason of the Premises, therefore let the Writ of Inquiry of Damages cease till the Issue above joined between the said Parties be determined; therefore, as well to try the said Issue joined
between

Unica
Taxatio.

Between the said Parties, as to enquire what Damages the said C. hath sustained in that behalf, the Sheriff is commanded, &c.

Judgment by Cognovit Actionem.

And the said A. by C. B. his Attorney, comes and defends the Force, Injury, and Damages, and whatsoever else he ought to defend, when and where the Court will please to take the same into Consideration; and saith, that he can't deny the Action of the said A. nor but that he owes to the said A. the said ten Pounds and ten Shillings; (and if on a Bond say) can't deny but that the said Bond is his Deed, nor but that he owes to the said A. the said 10 l. 10 s. in Manner and Form as the said A. above complains against him; therefore it is considered, that the said A. should recover against the said C. his said Debt, and also (the Money taxed for Costs) for his Damages which he hath sustained, as well by occasion of the detaining his said Debt, as for his Expences and Costs awarded by this Court to the said A. with his Consent, and the said C. is at the Mercy, and so forth.

The same by Administrators.

Say, that they can't deny, but that the said Bond is the Deed of the said G. nor but that they detain from the said H. the said hundred Pounds in Manner and Form as the said H. complains against them; therefore it is considered (as above) and also for his Damages which he sustained, as well occasioned by the detaining of his said Debt, as for his Expences and Costs laid out by him in prosecuting this Suit, awarded by this Court to the said

Hi.

H. with his Consent, to be levied of the Goods and Chattels in their Hands unadministred, which were the said *G's* at the Time of his Death, if they have so much in their Hands unadministred; and if they have not, then the said Damage to be levied of the proper Goods and Chattels of the said *A.* and *B.* and the said *A.* and *B.* at the Mercy, *and so forth.*

Jugment to take Assets in future.

And the said *W.* and *W.* inasmuch as the said *Elizabeth*, by her Plea, doth not deny, but that the said Writing Obligatory may be the Deed of the said *John Barnard*, nor but that the said Debt contained in the same Writing, is a true and just Debt yet unpaid, and saith nothing in Bar or Denial of the Action of the said *W.* and *W.* by the said subject Matter above pleaded by the said *Elizabeth*, that she hath no Goods or Chattels in her Hands unadministred, which were of the said *John* at the Time of his Death; and for that the said *W.* and *W.* are not yet advised, but that the Plea of the said *Elizabeth* may be true, pray Judgment for their said Debt by them above demanded, to be levied of the Goods and Chattels which were of the said *John* at the Time of his Death, that shall hereafter come to the Hands of the said *Elizabeth* to be administred; therefore it is considered, that the said *W.* and *W.* should recover against the said *Elizabeth* their said Debt to be levied of the Goods and Chattels which were of the said *John* at the Time of his Death, that shall hereafter come to the Hands of the said *Elizabeth* to be administred, and the said *Elizabeth* at the Mercy, *and so forth.*

A Cognovit Actionem, where the Plaintiff acknowledges Damages to 50 l. so that the Execution be stayed until the 15th of April then next following.

And the said C. in his proper Person, comes and defends the Force, Injury, and Damages, &c. and saith, that he can't deny the said Action of the said A. not but that the said C. undertook (or made such Promise) in the Manner and Form as the said A. hath above therefore complained against him, nor also but that the said A. hath sustained Damages by reason of the Non-performance of the said Promises and Undertakings to 50 l. as he the said A. hath above supposed in his Declaration, and thereupon the said A. prays, that the Damages so acknowledged, together with his Expences and Costs laid out by him about his Suit in that Cause, may be awarded to him; therefore it is considered, that the said A. shall recover against the said C. his said Damages above acknowledged to 50 l. and also 6 l. for Expences and Costs awarded by the Court of our said Sovereign Lord the King now here to the said A. by his Consent, which said Damages, in the Whole, amount to 56 l. and the said C. at the Mercy, *and so forth.*

A Writ of Inquiry.

George the Second, &c. to the Sheriff of Norfolk greeting: Whereas A. B. lately in our Court before us at *Westminster*, by Bill, without our Writ, impleaded C. D. being in the Custody;

The Attorney's

Custody of the Marshal of our *Marshalsea*, before us for this Cause, (that is to say) that whereas the said *C. D.* on the first Day of *June*, in the fifth Year of our Reign, was indebted (*and so go on as in the Declaration to the Words*) to the Damage of the said *A.* 10*l.* as he informs us; and such Proceedings were had in our Court before us, that the said *A.* ought to recover his Damages against the said *C.* by reason of the Premises. But because it is unknown to our Court before us, what Damages the said *A.* sustained on that Occasion, therefore we command you, that by the Oaths of twelve honest and lawful Men of your Bailiwick, you diligently enquire what Damages the said *A.* hath sustained as well on that Occasion, as for his Expences and Costs laid out by him about his Suit in this Cause, and the Inquisition, which you shall take thereof, do you send to us at *Westminster* on *Wednesday* next after three Weeks from the Day of *St. Michael*, under your Seal, and the Seals of those, by whose Oaths you shall take such Inquisition, and have you there, at the same Time, this Writ. Witness *Robert Lord Raymond*, the 12th Day of *June*, in the sixth Year of our Reign.

The Continuance and Return of the Inquisition.

At which Day came the said *A. B.* before our Sovereign Lord the King at *Westminster* by his said Attorney; and the Sheriff, (that is to say) *Sir P. M. Knight*, Sheriff of the said County of *S.* returned an Inquisition taken before him at the Castle of *V.* in the said County of *S.* on the tenth Day of *July*, in the sixth Year of the Reign of his present Majesty

George

George the Second, King of Great-Britain, and so forth; by the Oaths of twelve honest and lawful Men of his Bailiwick, by whom it is found, that the said A. B. hath sustained Damages occasioned by reason of the Premisses, besides his Expences and Costs laid out by him about his Suit in this Cause, to 100l. and for his Expences and Costs six Pence; therefore it is considered, that the said A. ought to recover against the said C. his said Damages found by the said Inquisition, and also 8l. 9s. 6d. awarded to him, with his Consent, by his Majesty's said Court now here, by way of Increase for his extraordinary Expences and Costs by him laid out in this Suit, which said Damages, in the Whole, amount to 115l. and the said C. is at the Mercy, and so forth.

A Writ of Inquiry in Trespass, where the Defendants pleaded not Guilty to Part, and justified as to the Residue, and Judgment for the Plaintiff on a Demurrer.

George the Second, to the Sheriff of Norfolk greeting: Whereas W. S. lately in our Court before us at Westminster, by his Bill, without our Writ, impleaded W. S. and T. A. being in the Custody of the Marshal of our Marshalsea, before us, for that they, on the twentieth Day of March, in the fifth Year of our Reign, with Force and Arms made an Assault upon the said W. at D. in your County, and then and there beat, wounded, ill-treated, took and imprisoned him, and there detained him in Prison for a long Time, (that is to say) for the Space of twenty Hours then next following, without any reasonable or lawful Cause, and against the Laws and Customs of this Kingdom, and until the said W. paid a Fine of five

five Shillings and six Pence to procure his Discharge, and then and there did other Wrongs to him, against our Peace, and to the Damage of the said *W.* 20 l. as he declares, and therefore he brought his Suit, *and so forth*; and such Proceedings are had in our Court before us, that the said *W.* ought to recover his Damages against the said *W. S.* and *T.* occasioned by the said Trespass, Assault and Imprisonment of the said *W. S.* and there detaining him by the Space of half an Hour, until the said *W. S.* paid a Fine of five Shillings and six Pence to the said *W. S.* and *T.* But because it is unknown to our Court before us what Damages the said *W. S.* hath sustained on that Occasion; therefore we command you, that by honest and lawful Men of your Bailiwick, you diligently inquire what Damages the said *W. S.* hath sustained, as well by occasion of the said Trespass, Assault and Imprisonment of the said *W. S.* and detaining him for the Space of half an Hour, until the said *W. S.* paid them the said Fine of five Shillings and six Pence, as for his Expences and Costs laid out by him about his Suit on that Occasion, and the Inquisition which you shall take thereon (as in the former.)

A Writ of Inquiry after a Scire Facias against an Administrator, where the Defendant died before the Return of the first Writ of Inquiry.

George the Second, to the Sheriff of *Middlesex* greeting; Whereas Robert S. lately in our Court before us at *Westminster*, (that is to say) in *Michaelmas Term* in the fifth Year of our Reign, impleaded *J. H.* then being in the Custody of the Marshal of our *Marshalsea* before us,

as, for this Cause, (that is to say) that where-
as the said *John* and *Robert*, on the twelfth
Day of *April*, in the Year of our Lord One
thousand seven hundred and thirty, at *West-*
minster in your County, accounted together
between themselves, (and so on as in the *De-*
claration) and such Proceedings were had
thereupon in our Court before us at *Westmin-*
ster, that the said *Robert* ought to have reco-
vered his Damages occasioned by his not per-
forming the said several Promises and Under-
takings. But because it was unknown to our
Court before us, what Damages the said *Robert*
had sustained by reason of the Premises, we
commanded your Predecessor, that by the
Oaths of twelve honest and lawful Men of
your County, that he should diligently in-
quire what Damages the said *Robert* had sus-
tained, occasioned as well by the not perform-
ing the said several Premises and Undertak-
ings, as for his Expences and Costs by him
paid out about his Suit in that behalf; and
that the Inquisition, which he should take
thereupon, he should send to us at *Westminster*,
on *Wednesday* next after fifteen Days from the
Feast-day of *Easter*, under his Seal and the
Seals of those, by whose Oaths he should take
such Inquisition, together with that Writ;
and the same Day was given to the said *Robert*
to be before us at *Westminster* aforesaid, as by
the Record and Proceedings thereof in our
same Court before us at *Westminster* may ma-
nifestly appear: And whereas on the Behalf
of the said *Robert* it hath been shewn to us,
that before the said *Wednesday* next, after the
said fifteen Days from the Feast-day of *Easter*,
the said *J. H.* died Intestate, and an Inquisi-
tion of the said Damages then remained to be
taken; and that one *Mary H.* Widow and Re-
lict

list of the said *John*, was Administratrix of all and singular the Goods and Chattels, Rights and Credits which were of and belonged to the said *J. H.* her said late Husband, who died Intestate, as we have been informed by the said *Robert*; and because we were willing, that those things which were right and just should be done in our Court before us, to have a due Execution thereof, we commanded you, that by honest and lawful Men of your Bailiwick, you should cause it to be known to the said *Mary*, that she was to be before us at *Westminster*, on *Saturday* next after the Morrow of the *Ascension* of our Lord, to shew Cause, if she knew of, or had any thing to say for herself, why Damages ought not to be assessed for, and recovered by the said *R.* according to the Form and Effect of the Statute in such Case made and provided, if it should seem expedient for her so to do, and further to do, and receive those things that our said Court there before us should have considered of in that behalf, and that you should have there at the same Time the Names of those, by whose Oaths you should have so caused it to be known to her, and that same Writ. At which Day the said *Robert*, by *N. S.* his Attorney, came before us at *Westminster*, and you our Sheriff of *Middlesex* made a Return to us, that by *R. N.* and *J. S.* honest and lawful Men of your Bailiwick, you had caused it to be known to the said *Mary*, that she was to appear before us at the Day and Place contained in the said Writ, to have shewn Cause, if she had, or knew of any thing, to say for herself, why the said Damages ought not to have been assessed against her, and recovered by the said *R.* if she had thought it expedient so to do, according to the Tenor of the said Writ; which

which said *Mary*, being so warned and solemnly required to be here at that Day, likewise came by *J. B.* her Attorney; whereupon the said *Robert* prayed, that his said Damages might be assessed and recovered by him in the said Action; and because the said *Mary* then said nothing, nor shewed or alledged any Cause to hinder final Judgment to be given in the said Action, or why Damages ought not to have been assessed in the said Action; therefore, at the Request of the said *Robert*, we command you, that by the Oaths of twelve honest and lawful Men of your Bailiwick, you diligently enquire what Damages the said *Robert* had sustained, as well occasioned by the Premises, as for his Expences and Costs laid out by him about his Suit in that behalf: And the Inquisition that you shall take thereon, do you send to us at *Westminster* on Friday next after the Morrow of *St. Martin*, under your Seal and the Seals of them by whose Oaths you take such Inquisition, together with this Writ. Witness *Robert Lord Raymond* at *Westminster*, the twenty-third Day of *October*, in the sixth Year of our Reign.

If your Proceedings are by Original, then the Writ of Inquiry is the same as in the *Common-Pleas*, only instead of saying, *was attached to appear in our Court before our Justices at Westminster*; you say, *was attached to appear in our Court before us*; and when you come to the Words, *and the Inquisition which you shall take thereon*, you say thus, *you shall send to us on the Octave of St. Hilary* (instead of a Day certain) *where-ever we shall then be in England.*

Executions.

Executions.

A Capias ad Satisfaciendum.

George the Second, &c. to the Sheriff of S. greeting ; We command you, that you take C. D. if he can be found in your Bailiwick, and safely keep him, so that you have his Body before us at *Westminster* on Monday next after three Weeks from the Day of St. Michael, to make Satisfaction to A. of a Debt of 20 l. which the said A. lately recovered in our Court before us, and alſo for 33 s. and 4 d. which were awarded to the said A. in our Court, before us, for his Damages which he sustained, as well occasioned by the Detainer of (or as well by occasion of detaining) the said Debt, as for his Expences and Costs laid out by him about prosecuting his Suit ; whereof the said C. D. is convicted, as appears to us of Record, and have you there at the same Time this Writ. Witness Robert Lord Raymond, at *Westminster*, the Twenty-eighth Day of June, in the fifth Year of our Reign.

If in Assumpsit, you say, occasioned as well by not performing certain Promises and Undertakings made to the said A. by him the said C. as also for his Expences and Costs, &c. as in the other, (Mutatis mutandis.)

If in Trespass on the Case generally, then say, occasioned as well by a certain Trespass on the Case committed against the said A. by him the said C. As also, &c.

If in Trespass only, occasioned by a certain Trespass lately committed on the said A. by him the said C. As also, &c.

If

If in Covenant, occasioned as well by the Breach of certain Covenants lately made by the said C. to the said A.

If in Ejectment, occasioned as well by a certain Trespass and Ejectment lately committed against the said A. by him the said C. As also, &c.

A Testatum Ca' Sa'

George the Second, &c. to the Sheriff of Suffolk, Greeting. Whereas we lately commanded our Sheriff of S. that he should take C. if he could be found in his Bailiwick, and that he should safely have kept him, so that he might have had his Body before us at Westminster, at a certain Day now past, to make Satisfaction to A. B. for a Debt of ten Pounds, which the said A. hath lately recovered in our Court before us; and also thirty Shillings and eight Pence, which were awarded to the said A. in our Court before us, for his Damages which he sustained, occasioned as well by the detaining his said Debt, as for his Expences and Costs laid out by him in prosecuting this Suit; whereof the said C. is convicted, as appears to us of Record, and our said Sheriff made a Return to us at that Day, that the said C. was not to be found in his Bailiwick; whereupon, on the Behalf of the said A. it is sufficiently testified in our Court before us, that the said C. wanders about, and lurks up and down in your County: Therefore we command you, &c.

On a Non. Prof.

To make Satisfaction to the said C. then you say, for five Pounds according to the Form of the
F Statute

The Attorney's

Statute in that Case made and provided, awarded to the said C. in our Court before us for his Expences and Costs in a certain Action against the said C. at the Suit of the said A. of a Plea of Debt (or *Trespafs on the Case*) as the Case is, forasmuch as the said A. hath not prosecuted his said Action: And have you there, at the same Time, this Writ.

Ca' Sa' for Costs against the Plaintiff after a Verdict.

To make Satisfaction to C. D. for 30 s. awarded to the said C. according to the Form of the Statute in that Case made and provided for his Expences and Costs laid out by him in making his Defence in a certain Action of Debt against the said C. at the Suit of the said A. and have you there this Writ.

For an Administrator.

To make Satisfaction to A. B. Gent, Administrator of all and singular the Goods and Chattels, Rights and Credits, which lately were of, and belonged to C. D. deceased, who died Intestate for a Debt of ten Pounds, and also (*the Costs allowed*) for his Damages which he sustained, as well occasioned by the detainer of the said Debt, as for his Expences and Costs laid out by him in prosecuting the said Suit, and whereof the said C. is convicted, as appears to us of Record; wherefore it is considered in our same Court before us, that the said A. may have his Execution thereof; and have you there this Writ. Witness, &c.

Ca'

*Ca' Sa' upon a Judgment affirmed
after a Writ of Error upon a
Judgment in the Time of the late
King.*

George the Second, &c. to the Sheriff of Lincoln, greeting: We command you, that you take *T. A.* late of *Fulstowe* in your County, Gentleman, otherwise called, &c. if he shall be found in your Bailiwick, and safely keep him, so that you have his Body before us (at the Return, which must be general, as on the *Ostave* of *St. Hilary*) wheresoever we shall then be in *England*, to make Satisfaction to *F. B.* for a Debt of ten Pounds, which the said *Francis*, lately in the Court of our late Father *George*, late King of *Great-Britain*, and so forth, before *Sir Robert Eyre*, Knight, and his Companions, Justices of the Court of *Common-Bench* at *Westminster*, recovered against him; and also for 15 l. for his Damages which he sustained, as well by reason of the detaining of the said Debt, as for his Expences and Costs laid out by him about his Suit in that Behalf, whereof the said *Thomas* is convicted, as by the Inspection of the Records and Proceedings thereof (which in the same Court of the said late King, before the said late King himself, the same late King caused to come with certain Causes of Error, and which in the same Court of our said late Predecessor, before the said late King himself, is in all things affirmed) it appears to us of Record now remaining before us; and also for 10 l. 10 s. which were awarded to the said *Francis*, in the said Court of the said late King, before the said late King

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himself,

The Attorney's

himself, according to the Form of the Statute in that Case made and provided, for Damages, Expences, and Costs, which the said *Francis* had sustained by reason of the Delay of the Execution of the said Judgment, by means of the said *Thomas's* prosecuting the said Writ of the same late King, for correcting Errors sued out of and upon the Premises as aforesaid, whereof the said *Thomas* is likewise convicted, as also appears to us of Record; and have you there this Writ. Witness *Robert Lord Raymond, &c.*

Ca' Sa' on a Judgment on a Scire Facias, wherefore Execution ought not, &c. after a Non Prof. upon a Writ of Error.

George the Second, &c. to the Sheriffs of *London*, greeting: We command you, that you take *Eliz. S.* late of *London*, Widow, if she can be found in your Bailiwick, and safely keep her, so that you have her Body before us in three Weeks from the Day of *St. Michael*, wheresoever we shall then be in *Great-Britain*, to make Satisfaction to *S. E.* for six Pounds and ten Shillings, which were awarded to the said *Sarah* in our Court before us, according to the Form of the Statute in such Case made and provided, for her Damages, Expences, and Costs which she sustained by reason of the Delay of the Execution of a certain Judgment lately obtained for 26 l. by the said *Sarah* against the said *Eliz.* in our Court of *Common-Bench*, before *Sir Robert Eyre Kt.* and his Companions our Justices of the said *Common-*
mon-

Pocket Companion.

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mon-Bench at Westminster, as by the Record and Proceedings of the said Judgment (which we lately caused to be brought into our said Court before us, with certain Causes of Error) now remaining in our Court before us, manifestly appears to us of Record; and for that the said Eliz. afterwards in our Court before us, did not prosecute her said Writ, as also appeareth to us of Record, and that you have there at the same Time this Writ. Witness, &c.

A Capias ad Satisfaciendum for an Administrator for Residue in Case, with a Recital of a Fieri Facias in London, and another in Middlesex, and the Sheriff of Middlesex's Warrant to the Bailiff of the Liberty of Westminster, who levied Part, notwithstanding Writs of Error and Superseedeas.

George the Second, &c. to the Sheriffs of London, greeting: Whereas by our Writ we lately commanded you, that you should cause to be levied of the Goods and Chattels of T. B. Esq; in your Bailiwick 300 l. 6 s. which Ruth W. Widow, Administratrix of all and singular the Goods and Chattels, Rights and Credits, which were of R. W. her late Husband, deceased, lately in our Court before us at Westminster, recovered against him for her Damages which she sustained, occasioned as well by not performing several Promises and Undertakings lately made by the said T. to the same Ru. as Administratrix of the said Ro. as also for her Expences and Costs laid out by her about her Suit in that behalf, whereof the said T. is convicted, as appeareth to us of Record, and that you should have that Money before us at a certain Day now past, to ren-

Testa-
tum
Fieri Fa-
ciast^o the
Sheriff of
Middle-
sex.

That the
Sheriff
returned
he had
made a
Mandate
to the
Bailiff of
West-
minster.

Who had
levied
86 l. 15 s.

der to the said *Ru.* for her said Damages, Expences and Costs, notwithstanding our Writ of *Error*, and our Writ of *Superfedeas*, thereupon issued; and you at that Day thereupon made a Return to us, that the said *T.* had no Goods or Chattels in your Bailiwick, whereby you were able to levy the Damages, Expences and Costs aforesaid, or any Part thereof; whereupon, on the Part and Behalf of the said *Ruth*, it was sufficiently testified before us in our Court at *Westminster*, that the said *Tho.* had sufficient Goods and Chattels in our County of *Middlesex*, whereof the Sheriff of the said County might cause to be levied the said Damages, Expences, and Costs: Whereupon we commanded the said Sheriff of *Middlesex*, that he should cause to be levied of the Goods and Chattels of the said *Tho.* in his Bailiwick 300 l. 6 s. for her Damages, Expences, and Costs aforesaid, and that he should have there that Money before us at *Westminster*, on the *Octave* of the Feast-day of *St. Hilary*, to render to the said *Ru.* for her said Damages, Expences and Costs, notwithstanding our said Writ of *Error*, and our Writ of *Superfedeas*, issued as above: And our said Sheriff of *Middlesex* at that Day made a Return to us, that for the Execution to be made of the said Writ to him directed, he had directed the Bailiff of the Liberty of the Dean and Chapter of the Collegiate Church of *Saint Peter Westminster*, (who hath full Execution of all Warrants, Writs, and Mandates within that Liberty) to whom the said Bailiff (that is to say) *G. W. Esq;* gave him this Answer, That he had caused to be levied of the Goods and Chattels of the said *T.* 86 l. 15 s. Parcel of the said Debt and Damages, which said Money he had ready before us at the Day and Place aforesaid,

aforesaid, to render to the said *Ru.* in Part of her said Debt and Damages : And he further certified to us, that the said *T.* had no other or more Goods or Chattels in his Bailiwick, whereof he was able to cause to be levied the Residue of the Debt and Damages aforesaid, or any Part thereof: Therefore we command you, that you take the said *Thomas* if he can be found in your Bailiwick, and safely keep him, so that ye have his Body before us at *Westminster* on Monday next after fifteen Days from the Feast-day of *Easter*, to make Satisfaction to the said *Ruth* for 213 l. 11 s. Residue of the said 300 l. 6 s. for the Damages aforesaid ; and have you there at that Time this Writ. Witness *Robert Lord Raymond*, the 12th Day of *February* in the sixth Year of our Reign.

A Capias ad Satisfaction for the Residue.

A Capias ad Satisfaciendum after a Fieri Facias, on a Recognizance after a Judgment affirmed on a Writ of Error against two Defendants, one of which was returned dead, for the Residue of the Money due, Part having been levied by the Bailiff of Westminster, by Virtue of a Fieri Facias.

George the Second, &c. to the Sheriff of *Middlesex*, greeting : Whereas by our Writ, we lately commanded you, that of the Lands and Chattels of *W. P.* of the Parish of *Saint Margaret's Westminster* in your County, Gent. in your Bailiwick, you should cause to be made 100 l. and of the Lands and Chattels of *J. B.* of in your County, Gent. you should cause to be made 100 l. to render to *T. F.* according to the Form and Effect of an Award of an Execution upon a certain Recognizance acknowledged by the said *W. P.* and

The Attorney's

J. B. to the aforesaid *J. F.* in our Court before *Sir Peter King, Kt.* and his Companions, our Justices of the *Common-Bench* at *Westminster*, as by the Record and Proceedings of the Award of the said Execution which we caused to be brought into our Court before us at *Westminster*, with certain Causes of Error as appears to us of Record; and also 12 l. which were awarded to the said *J. F.* in our same Court, before us, according to the Form of the Statute in that Case made and provided, for his Damages, Expences, and Costs which he had by Occasion of the Delay of the Execution of the said Judgment, by Means of prosecuting our certain Writ of correcting Errors sued out by the said *W.* and *J. B.* of and concerning the Premises as aforesaid; whereof the said *W.* and *I. B.* are convicted, as likewise appears to us of Record; and that you should have that Money before us in three Weeks from the Day of *St. Michael*, wheresoever we should then be in *Great-Britain*, to render to the said *J. F.* for the said Debt, Damages, Expences, and Costs; and you having at that Day made a Return to us, that, in order to have a due Execution to be made of the said Writ, (to you directed) you had directed the Bailiff of the Liberty of the Dean and Chapter of the Collegiate Church of *St. Peter Westminster*, who hath full Execution of all Warrants, Writs, and Mandates (within that Liberty) to whom the said Bailiff (that is to say) *G. W. Esq;* gave you this Answer, That he had caused to be levied of the Goods and Chattels of the said *J. B.* 4 l. 4 s. Parcel of the said Debt and Damages, which said Money he had ready before us at the Day and Place aforesaid, to render to the said *J. F.* in Part of his said Debt and Damages: And further,
you

you certified to us, that the said J. B. had no other or more Goods or Chattels in your Bailiwick, whereof you was able to cause to be levied the Residue of the said Debt and Damages; or any Part thereof; and that the said W. is dead. Therefore we command you, that you take J. B. if he is to be found in your Bailiwick, and safely keep him, so that you have his Body before us, on the Octaves of St. Hilary, wheresoever we shall then be in Great-Britain, to make Satisfaction to the said J. F. for 107 l. 10 s. Residue of the said 112 l. for Debt, Damages, Expences, and Costs; and have you there, at the same Time, this Writ. Witness, &c.

A Testatum Capias ad Satisfaciendum at the Suit of Husband and Wife, upon a Judgment recovered by her as Executrix, upon a Promise made to her former Husband, revived by her and her Husband by Scire Facias.

George the Second, &c. to the Sheriff of Middlesex greeting: Whereas Elizabeth Grove, Widow, Executrix of the last Will and Testament of John Grove her late Husband, deceased, in the Court of our dearly beloved Father George, late King of Great-Britain, before the said late King himself at Westminster, by the Judgment of the same Court had recovered against J. Gyle 43 l. 9 s. 9 d. for his Damages which he had sustained, occasioned as well by not performing of certain Promises and Undertakings made to the said John in his Life-time by the said J. as also for her Expences and Costs laid out by the said Elizabeth about her Suit in this behalf, whereof the said Jo. is convicted, as appeareth to us of Record: And the said Elizabeth, after this

By;

Court

The Attorney's

Court giving the said Judgment, took to Husband one *William Reeve*, and had taken out no Execution on the said Judgment; therefore, in our Court before us at *Westminster*, it was considered, that the said *William* and *Elizabeth* should have their Execution against the said *J.* for the Damages aforesaid, according to the Force, Form, and Effect of the said Recovery, as likewise appeareth to us of Record, and we thereupon, by our Writ, lately commanded the Sheriffs of *London*, that they should take the aforesaid *J.* if he could have been found in their Bailiwick, and safely to have kept him, so that they might have had his Body before us at *Westminster* at a certain Day mentioned in the same Writ, to satisfy to the said *William* and *Elizabeth* for the Damages aforesaid, and our said Sheriffs of *London*, at that Day returned to us, that the said *J.* was not to be found in his Bailiwick; upon which, on the Behalf of the said *William* and *Elizabeth*, it is sufficiently testified in our Court before us, that the said *J.* lurks and wanders up and down in your County; therefore we command you, that you take him, if he shall be found in your Bailiwick, and safely keep him, so that you have his Body before us at *Westminster*, on *Thursday* next after fifteen Days from the Day of *St. Martin*, to make Satisfaction to the said *William* and *Elizabeth* for the Damages aforesaid; and have you there, at that Time, this Writ, &c.

A Fieri Facias in Debt.

George the Second, &c. to the Sheriff of *Middlesex*, greeting: We command you, that you cause to be made of the Goods and Chattels of *C. D.* (and if on a Bond, then say, otherwise

wife called as in the Bond) in your Bailiwick, one hundred Pounds, which *A. B.* lately in our Court before us at *Westminster*, recovered against him for a Debt; and also (*the Sum awarded for Costs*) which were awarded to the said *A. B.* in our same Court before us, for his Damages which he sustained, occasioned as well by detaining of his said Debt, as for his Expences and Costs laid out by him in and about his Suit in that behalf, whereof the said *C.* is convicted, as appears to us of Record, and have you the said Moneys before us at *Westminster*, on Monday next after three Weeks from the Day of *St. Michael*, to render to the said *A.* his Debt and Damages aforesaid, and have you there, at the same Time, this Writ. Witness *Robert Lord Raymond* the twenty-eighth Day of *June* in the sixth Year of our Reign.

If the Proceedings are by Original,
then say;

And have the Money before us in three Weeks from the Day of *St. Michael*, whereforever we shall then be in *England*, to render, &c.

If in Case upon a Promise, then you must say;

One hundred Pounds which *A.* hath lately recovered against him in our Court before us at *Westminster*, for his Damages which he sustained, occasioned as well by the not performing certain Promises and Undertakings, or a certain Promise and Undertaking (*as the Case is*), lately made by the said *C.* to the said *A.* as for his Expences and Costs, as before.

If

*The Attorney's**If in Covenant.*

For his Damages which he sustained, as well by reason of breaking of a certain Covenant, or certain Covenants. (*as the Case is*) lately made between the said C. and the said A. as also for his Expences and Costs, &c.

In Ejectment.

For his Damages which he sustained by reason of a certain Trespass and Ejectment, or certain Trespasses and Ejectments (*as the Case is*) committed against the said A. by the said C. with Force and Arms, and against our Peace, at E. in your County.

In Trespass.

By reason of a certain Trespass committed against the said A. by the said C. with Force and Arms, and against our Peace, at E. in your County.

If against an Administrator.

That you cause to be made one hundred Pounds of the Goods and Chattels which were of G. H. deceased, at the Time of his Death in the Hands and Custody of E. T. Administrator of all and singular the Goods and Chattels, Rights and Credits, which were of the said G. H. at the Time of his Death, who died Intestate, being in your Bailiwick; which A. B. lately in our Court, (*as before to the Words, whereof he is convicted, as appears to us of Record*) if he should have so much in his Hands; and if he should not have so much in his Hands, then

then the Damages aforesaid (*if it be in Debt*) *if in Case, then say*, the said Expences and Costs, because the whole Demand in Case consists of Damages of the proper Goods and Chattels of the said *E. T.* and have you the Money as before.

If against an Executor.

That you cause to be made of the Goods and Chattels which were of the said *G. H.* deceased, at the Time of his Death in the Hands of *E. T.* Executor of the last Will and Testament of the said *G. H.* in your Bailiwick, as before.

If against the Plaintiff for Costs awarded to the Defendant.

That you cause to be made ten Pounds of the Goods and Chattels of *A. B.* in your Bailiwick, which were by this Court awarded according to the Form of the Statute in such Case made and provided to *C. D.* for his Expences and Costs in his Defence in a certain Action of Trespass at the Suit of the said *A.* and have you the Money before us at *Westminster*, on *Monday* next after three Weeks from the Day of *St. Michael*, to render to the said *C.* for his Expences and Costs aforesaid; and have you there, at the same Time, this Writ. Witnesses, &c.

A Testatum Fieri Facias in Debt.

George the Second, &c. to the Sheriff of *Norfolk*, greeting: Whereas we lately commanded our Sheriff of *Middlesex*, that he should cause to be made of the Goods and Chattels of *C. D.* in his Bailiwick, one hundred Pounds, which

which *A. B.* lately in our Court before us at *Westminster*, recovered against him for a Debt; and also (*so much as the Costs are taxed at*) which lately, in our same Court before us, were awarded to him for his Damages which he sustained, occasioned as well by the detaining of his said Debt, as for his Expences and Costs laid out by him about his Suit in that behalf, whereof the said *C.* is convicted, as appears to us of Record; and that he should have the Money before us at *Westminster*, on Monday then next after three Weeks from the Day of *St. Michael* now last past, to render to the said *A.* for the Debt and Damages aforesaid; and our said Sheriff of *Middlesex* made a Return to us at that Day, that the said *C.* had not any Goods or Chattles in his Bailiwick, whereof he could cause to be made the said Money; whereupon, on the Behalf of the said *A.* it is sufficiently testified in our Court before us, that the said *C.* hath Goods and Chattels sufficient in your Bailiwick, whereof you may cause to be made the said Money; therefore we command you, that you cause to be made the said 100 l. of the Goods and Chattels of the said *C.* in your Bailiwick for the said Debt, &c. as in the former, p. 106.

Fi' Fa' against Bail.

George the Second, &c. to the Sheriff of *Middlesex* greeting: We command you, that of the Goods and Chattels of *R. T. I. W.* (*Manu-
captors*.) of *A. R.* in your Bailiwick, you cause to be made 120 l. for a Debt which *E. P.* lately in our Court before us at *Westminster*, recovered against the said *A. R.* and also fifty Shillings, which, in our same Court, were awarded to the said *E. P.* for his Damages which

which he sustained, as well by reason of detaining his said Debt, as for his Expences and Costs laid out by him about his Suit in this Particular, whereof the said *A. R.* is convicted as appears to us of Record ; and whereupon it is considered in our same Court before us at *Westminster*, that the said *E. P.* may have Execution against the said *R. T.* and *J. W.* for the said Debt and Damages, according to the Force, Form, and Effect of a certain *Recognizance* acknowledged by them the said *R. T.* and *J. W.* in our said Court before us, for the said *A. R.* at the Suit of the said *E. P.* as likewise appears to us of Record, and have you the Money before us at *Westminster*, on *Monday* next after the *Octave* of *St. Hilary*, to render to the said *E. P.* for his Debt and Damages aforesaid ; and have you there, at the same Time, this Writ. Witness, &c.

Fieri Facias on a Judgment on a Recognizance of Bail in the Common-Bench, after an Affirmance of the same on a Writ of Error in the King's-Bench.

George the Second, &c. to the Sheriffs of London, greeting : We command you, that of the Goods and Chattels of *W. T.* of the Parish of *St. Margaret's Westminster* in your County, Gentleman, being in your Bailiwick ; and of the Goods and Chattels of *J. B.* of *Grange-Court, Lincolns Inn-Fields*, in your County, Gentleman, you cause to be made one hundred Pounds, to be rendred to *J. T.* according to the Form and Effect of the Award of an Execution upon a certain *Recognizance* acknowledged by the said *W. T.* and *J. B.* to the said *J. F.* in our Court before *Sir Peter King, Kt.* and his Companions our Justices of the
Common-

The Attorney's

Common-Bench at Westminster, as by the Record and Proceedings of the Award of the Execution thereof (which we caused to be brought into our Court before us at *Westminster*, with certain Causes for correcting Errors in the same) as appeareth to us of Record, and which in our Court before us is now in all things affirmed, as likewise appeareth to us of Record; and also 12 l. which were awarded to the said *J. F.* in our same Court, according to the Form of the Statute in that Case made and provided, for his Expences and Costs which he sustained by reason of the Delay of the Execution of the Judgment aforesaid, by means of the prosecuting of our said Writ for correcting Errors sued out as aforesaid by the said *W. T.* and *J. B.* at and upon the Premises, whereof the same *W.* and *J. B.* are convicted, as likewise appears to us of Record, and have you the Moneys before us in three Weeks from the Day of the Holy Trinity, wheresoever we shall then be in *England*, to be rendered to the said *J.* for his said Debt, Damages, Expences, and Costs, and have you there likewise, at the same Time, this Writ. *Witness, &c.*

*Fieri Facias for triple Damages
of Tythes.*

George the Second, &c. to the Sheriff of *Norfolk*, greeting: We command you, that of the Lands and Chattels of *James Denton* late of *Blowfield* in your County, Maltster, in your Bailiwick, you cause to be levied 62 l. 17 s. which were awarded in our Court before us at *Westminster*, to *Robert Reve*, Clerk, for the triple Value of certain Tythes of Grain springing, growing, and renewing from certain
Lands

Lands in *Blowfield* in your County, taken and carried away by the said *James*, contrary to the Form of the Statute in that Case made and provided, and have you that Money before us at *Westminster* on *Friday* next after the Morrow of the Holy *Trinity*, to render to the said *Charles* the said 62 l. 17 s. whereof the said *James* is convicted, as appears to us of Record; and have you there, at the same Time, this Writ. Witness *Robert Lord Raymond*, &c.

Fieri Facias de bonis Ecclesiasticis.

George, &c. To the Reverend Father in God *Thomas*, Lord Bishop of *Lincoln*, greeting: We command you, that of the Ecclesiastical Goods of *J. W.* (otherwise called *J. W.* Master of Arts, Rector of the Rectory of *Rand*, otherwise *Rannd*) in your Diocese, you cause to be made 400 l. for a Debt which *W. F.* lately recovered in our Court before us at *Westminster* against him, and also 40 l. for his Damages which he sustained, occasioned as well by the detaining his said Debt, as for his Expences and Costs laid out by him about his Suit in this Cause, whereof the said *John* is convicted, as appears to us of Record; and have you that Sum there before us at *Westminster* on *Wednesday* next after one Month from the Feast-day of *Easter*, to render to the said *W.* for his said Debt and Damages whereof the said *J.* is convicted as aforesaid; and forasmuch as our Sheriff of *London* hath returned to us at *Westminster* on the *Monday* next after the *Octave* of *St. Hilary* last, that the said *J. W.* is a beneficed Clerk in your Diocese, having neither any Goods or Chattels or Lay-Fee in their Bailiwick, whereof the said Debt

Debt and Damages, or any Part thereof, could in any wise be made and levied ; and have you there, at the same Time, this Mandate Witness, &c.

Fieri Facias in Debt upon Bond for an Administrator after a Scire Facias, upon a Judgment of the Court of Common-Pleas, affirmed upon a Writ of Error in the King's-Bench, in the Life of the Intestate.

George the Second, &c. to the Sheriffs of London, greeting: We command you, that you cause to be made of the Goods and Chattels of S. F. late of London, Merchant, otherwise called (*as he is mentioned in the Bond*) in your Bailiwick, one thousand Pounds for a Debt which G. P. now deceased, in his Life-time late in our Court before Sir Robert Eyre, Kt. and his Companions, our Justices of our Court of Common-Bench at Westminster, by our Writ and by the Judgment of the same Court, recovered against him ; and also 15 l. 10 s. awarded to the said G. P. with his Consent, by our said Court of Common-Bench, for his Damages which he sustained by reason of detaining the said Debt, whereof the said Simon is convicted, *as by the Inspection of the Records and Proceedings thereof* (which we caused to be brought into our Court before us at Westminster, by vertue of our Writ for correcting Errors, prosecuted by the said Simon of and upon the Premises, and which in our Court before us in all things affirmed) *it appeared to us of Record*, as also 14 l. which, in our same Court before us at Westminster, according to the Form of the Statute in that Case made and provided, were awarded to the said G. for his Damages, Expences, and Costs which

which he hath sustained by reason of the Delay of the said Execution by Means of prosecuting our said Writ of Error sued out as aforesaid by the said *Simon* of and upon the Premises, and whereof the said *Simon* is convicted, as appears to us of Record: And whereas the said *G. P.* afterwards (that is to say) on the first Day of *March* in the twelfth Year of our Reign died Intestate, not having had any Satisfaction for his said Debt, Damages, Expences, and Costs, or any Part thereof; after whose Death (that is to say) on the fifth Day of *March* in the said twelfth Year of our Reign, at *London* aforesaid, Administration of all and singular the Goods and Chattels, Rights and Credits, which were of and belonged to the said *G. P.* at the Time of his Death, by *Thomas*, by Divine Providence, Lord Archbishop of *Canterbury*, Primate and Metropolitan of all *England* (to whom the Commission of the said Administration aforesaid of Right belonged) was committed to *E. P.* Widow and Relict of the said *G. P.* in due Form of Law: And wherefore, in our same Court before us, it is considered, that the said *E.* may have an Execution against the said *Simon* for the Debt, Damages, Expences, and Costs aforesaid, as also for seven Pounds for her Expences and Costs by our Court before us at *Westminster*, according to the Form of the Statute in that Case made and provided, awarded to the said *E.* whereof the said *Simon* is convicted, as it appears likewise to us of Record, and that you have that Money before us at *Westminster*, in fifteen Days from the Day of the Holy *Trinity*, wheresoever we shall be in *England*, to render to the said *E.* for the Debt, and the said several Damages, Expences, and Costs, and have

have you there, at the same Time, this Writ. Witness, &c.

A Fieri Facias where Judgment in the Common-Pleas was affirmed in the King's-Bench, and the Plaintiff in the Action died, and his Administrator revived it by Scire Facias, and had Judgment.

GEORGE, &c. to the Sheriff of Middlesex: We command you, that of the Goods and Chattels of *W. S.* late of, &c. in your Bailiwick, you cause to be made 28 l. 8 s. 9 d. for a Debt which *T. A.* lately deceased, in his Life-time, before Sir Robert Eyre, Kt. and his Brethren, our Justices of the Common-Bench at Westminster, recovered against him; and also 17 l. awarded to the said *T. A.* with his Consent, by our said Court of Common-Bench, for his Damages which he sustained by reason of detaining that Debt, whereof the said *T. S.* is convicted, as by the Inspection of the Record and Proceedings thereof (which by Vertue of our Writ for correcting Errors, sued out by the said *W. S.* we caused to be brought into our Court before us, at Westminster, with certain Causes of Error) it appears to us of Record; as also 9 l. which, in our Court before us at Westminster, according to the Form of the Statute in that Case made and provided, were awarded to the said *Thomas* for his Damages, Expenses, and Costs which he sustained by reason of the Delay of the Execution of the said Judgment, by means of prosecuting our said Writ for correcting Errors, sued out as aforesaid by the said *W. S.* against the said *T. A.* of and upon the Premises; upon which said Writ of Error the Judgment against the said *W. S.* is in all Things affirmed, as likewise appears

to us of Record ; and thereupon it was considered in our same Court before us at *Westminster*, that *Judith A.* Widow, Relict, and Administratrix of all the Goods and Chattels, Rights and Credits, which were of and belonged to the said *T. A.* at the Time of his Death, may have her Execution against the said *W. S.* for the said Debt, and the said several Damages, Expences and Costs ; and have you the said Monies before us at *Westminster*, in three Weeks from the Day of *St. Michael*, wheresoever we shall then be in *England*, to render to the said *Judith* for her said Debt, Damages, Expences, and Costs ; and have you there likewise, at the same Time, this Writ. Witness, &c.

A Testatum non omittas Fieri Facias in Debt, after Judgment affirmed on a Writ of Error in the King's-Bench.

GEORGE, &c. to the Sheriff of *Berks*, Greeting. Whereas we lately commanded our Sheriffs of *London*, that of the Goods and Chattels of *John R.* late of *Windsor* in your County, Cornchandler, in their *Bailiwick*, they should cause to be made 150 l. 10 s. which *Elizabeth F.* Widow, lately in our Court before Sir *Peter King*, Kt. and his Brethren, our Justices of the *Common-Bench* at *Westminster*, recovered against him for her Damages which she sustained, as well by reason of his not performing his Promise and Undertaking, lately made by the said *John* to the said *Elizabeth*, as also for her Expences and Costs laid out by her about her Suit in that Cause, whereof the said *John* was convicted, as by the Inspection of the Record and Proceedings thereupon, (which we lately caused to be brought into our Court before

before us at *Westminster*, with certain Causes of Error, and which in our same Court before us, is in all Things affirmed) now remaining in our Court before us, as it appears to us of Record; and also fourteen Pounds which were awarded to the said *Elizabeth*, in our same Court before us, according to the Form of the Statute in that Case made and provided, for her Damages, Expences and Costs which she sustained, by reason of the Delay of the Execution of the said Judgment, by means of prosecuting our said Writ for correcting Errors, sued out by the said *John* as aforesaid, of and upon the Premises, whereof the said *John* is convicted, as appears to us likewise of Record, and that they should have that Sum of Money before us, in fifteen Days from the Day of *St. Martin* now last past, wheresoever we should then be in *England*, to render to the said *Elizabeth*, for her said Damages, Expences and Costs; and our said Sheriffs of *London* at that Day returned to us, that the within named *John R.* had no Goods or Chattels in their Bailiwick, whereof the within written Damages, Expences and Costs, or any Part thereof, could be made or levied; whereupon, on the Behalf of the said *Elizabeth*, it is sufficiently testified in our Court before us, that the said *John R.* hath sufficient Goods and Chattels in your Bailiwick, whereof the said Damages, Expences and Costs, may be caused to be made and levied; wherefore we command you, that you do not omit by reason of any Liberty within your County, but that you enter therein, and of the Goods and Chattels of the said *John R.* in your Bailiwick, you cause to be made 164 l. 10 s. for the said Damages, Expences and Costs, and have you that Sum of Money before us, on the *Octave* of *St. Hillary*, where-

wheresoever we shall then be in *England*, to tender to the said *Elizabeth*, for her said Damages, Expences and Costs; and have you also there, at the same Time, this Writ. Witnesses, &c.

A Fieri Facias for Restitution on the Reversal of a Judgment on a Writ of Error.

GEORGE, &c. to the Sheriff of N. Greeting: Whereas *John A.* lately in our Court (that is to say) in the Term of *St. Michael*, in the fifth Year of our Reign, before Sir *Robert Tyre, Kt.* and his Brethren, our Justices of the Common-Bench, at *Westminster*, by our Writ, and by the Judgment of the same Court, recovered against *R. C.* late of, &c. and *M.* his Wife, *A. W.* late of, &c. and *E. W.* late of, &c. 3 l. which in our said Court of Common-Bench at *Westminster* were awarded to the said *John*, for his Damages which he had sustained, by reason of certain Trespasses committed against the said *John* by the said *R. M. A.* and *E.* with force and Arms, against our Peace, at *B.* aforesaid, whereof they are convicted, as by the Inspection of the Record and Proceedings hereof, (which we lately caused to be brought into our Court before us at *Westminster*, with certain Causes for correcting Errors in the same) it appears to us of Record: And whereas we, by reason of divers Errors in the said Record and Proceedings aforesaid, and also in giving the said Judgment, have reversed and totally annulled the same: It is considered in our same Court before us at *Westminster* aforesaid, that the said *R. M. A.* and *E.* should be restored to all Things which they have parted with

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with by reason of the said Judgment, and for that the said *John A.* sued out his Execution upon the said Judgment; and they the said *R. M. A. and E.* were thereupon taken in Execution for the same, and detained in Prison until Payment was made to the said *John* of the said 13 l. Therefore we command you, that of the Goods and Chattels of the said *John* in your Bailiwick, you cause to be made the said 13 l. and have you that Sum before us at *Westminster* (at the Day of the Return) to restore to the said *R. M. A. and E.* the said 13 l. awarded to them by our said Court as aforesaid, upon the Reversal of the said Judgment; and have you there, at the same Time, this Writ. Witness, &c.

*Writs of Scire Facias.**A Scire Facias upon a Judgment in Debt.*

GEORGE the Second, &c. to the Sheriffs of *London*, Greeting: Whereas *J. C.* lately in our Court before us at *Westminster*, by a Bill without our Writ, and by a Judgment of the same Court recovered against *T. H.* of the *Middle-Temple, London*, Esq; four hundred and seven Pounds for a Debt; and also seventy Shillings for his Damages which he sustained, as well occasioned by the detaining of his Debt, as for his Expences and Costs laid out by him about prosecuting his Suit in that behalf, whereof the said *Thomas* is convicted, as appears to us of Record: And now on the Part of the said *John*, we have received Information in our Court before us, that altho' Judgment be thereof given, yet nevertheless Execution for the said Debt and Damages still remains to be made to him; wherefore the said

John

John hath besought us to provide him proper Relief in this Case : And we, being desirous that what is Right and Just should be done therein, we command you, that by honest and lawful Men of your Bailiwick, you cause it to be known to the said *T.* that he be before us at *Westminster* on *Monday* next after three Weeks from the Day of *St. Michael*, to shew if he knows of, or has any Thing to say for himself, why the said *J.* ought not to have his Execution against him for the said Debt and Damages, according to the Force, Form, and Effect of the said Recovery, if it shall seem expedient to the said *T.* so to do, and further to do and receive that which our said Court before us shall then and there consider of in this Case ; and have you there the Names of those, by whom you shall so cause it to be known to him, and this Writ. Witness *Robert Lord Raymond*, the twenty-eighth Day of *June*, in the sixth Year of our Reign.

A Scire Facias against an Administrator in Case.

George the Second, &c. to the Sheriff of *Middlesex*, Greeting : Whereas *Robert S.* lately in our Court before us at *Westminster*, by a Bill without our Writ, and by the Judgment of the same Court, recovered against *J. H.* fifty Pounds for his Damages which he had sustained, as well by occasion of the not performing certain Promises and Undertakings made by the said *John* to the said *Robert*, as for his Expences and Costs by him laid out about prosecuting his Suit in that behalf, whereof the said *John* is convicted, as appears to us of Record : And now, on the behalf of the said *Robert*, we have received Information in our

G

Court

The Attorney's

Court before us, that altho' Judgment be given, yet Execution of the said Judgment remains to be made to him; and the said *John* is now dead, Intestate, and Administration of all and singular the Goods and Chattels, Rights and Credits, which were the said *John's* at the Time of his Death, was committed to one *M. H. Widow* and Relict of the said *J.* after his Decease in due Form of Law at *Westminster* in your County, as in our Court before us we have received Information from the said *Robert*; whereupon the said *Robert* hath besought us to provide him a proper Remedy in this Particular; and we, being willing that which is Right and Just should be done in this Case, do command you, that by honest and lawful Men of your Bailiwick, you cause it to be known to the said *Mary*, that she be before us at *Westminster*, on *Saturday* next after the *Octave* of the *Holy Trinity*, to shew, if she has or knows of any Reason, why the said *Robert* ought not to have his Execution against her for his said Damages, Expences, and Costs, of the Goods and Chattels which were the said *John's*, and that are unadministred in the Hands of the said *Mary*, according to the Force, Form, and Effect of the said Recovery, if it shall seem expedient to her so to do, and further to do and receive hereafter whatsoever our Court before us shall consider of in this Case: And have you there, at the same Time, the Names of those by whom you shall so cause it to be known to her, and this Writ. Witness *Robert Lord Raymond*, the twenty-second Day of *May*, in the fifth Year of our Reign.

A Scire

*A Scire Facias to have an Execution
in Debt.*

George the Second, &c. to the Sheriff of Middlesex, Greeting : Whereas *Eliz. 7.* Widow, Executrix of the last Will and Testament of *E. 3.* her late Husband, deceased, lately in our Court before us at *Westminster*, by a Bill without our Writ, and by the Judgment of the same Court recovered against *J. T. otherwise called J. T. of, &c.* 400 l. for a Debt, and 23 s. for Damages which she had sustained, as well by occasion of detaining the said Debt, as for her Expences and Costs laid out by her about her Suit in that Cause, whereof the said *G.* is convicted, as appears to us of Record; and now, on the Part of the said *Elizabeth*, we have received Information in our Court before us, that altho' Judgment be given, yet, nevertheless, Execution remains to be made to her; wherefore the said *Elizabeth* hath besought us to provide her a proper Remedy; and we being willing, that whatever is Right and Just should be done to her in this Case, we command you, as we have at another Time commanded you, that by honest and lawful Men of your Bailiwick, you cause it to be known to the said *Jane*, that she be before us at *Westminster*, on *Wednesday* next after fifteen Days from the Feast-day of *Easter*, to shew if she knows of, or has any Thing to say for herself, why the said *Elizabeth* ought not to have an Execution against her for her said Debt and Damages, according to the Force, Form, and Effect of the said Recovery; and further to do and receive those Things that our Court before us shall then and there consider of in this Case; and have you there,

at the same Time, the Names of those, by whom you shall so cause it to be known to her, and this Writ. Witness *Robert Lord Raymond*, the twelfth Day of *February*, in the fifth Year of our Reign.

*A Scire Facias against one of the Bail
in an Action of Debt.*

George, &c. to the Sheriff of *Middlesex*, Greeting: Whereas *J. A.* Gentleman, lately in our Court before us at *Westminster*, by a Bill without our Writ, and by the Judgment of the same Court recovered against *J. C.* Esq; otherwise called, &c. as in the Bond, eight hundred Pounds for a Debt, and also fifty-three Shillings for his Damages which he had sustained, as well by occasion of the detaining his said Debt, as for his Expences and Costs laid out by him about the Prosecution of that Suit, whereof the said *J.* is convicted, as appears to us of Record; and altho' Judgment be given thereof, nevertheless Execution of the said Debt and Damages remains to be made to him: And whereas *G. W.* of the *Paultry*, *London*, Gent. heretofore, that is to say, in the Term of *St. Michael*, in the third Year of our Reign, personally came before us at *Westminster*, and became a Manucaptor and Pledge for the said *J.* that if it happened, that the said *J.* should be convicted at the Suit of the said *James* in the said Plea, then he, the said Manucaptor, granted that as well the said Debt as all such Damages, Expences, and Costs which should be awarded to the said *James* in this Cause, should be made of his Lands and Chattels, and levied to the Use of the said *James*, if it should happen the said *John* should not pay to the said *James* the said Debt, Damages,

mages, Expences, and Costs, or should not render his Body to the Marshal of our Prison of the *Marshalsea* before us; which said Debt and Damages, Expences and Costs are not paid to the said *James*, nor hath the said *John* rendered himself to our Prison of the Marshal of the *Marshalsea* before us, as we have received Information from the said *James*, in our said Court before us: Wherefore the said *James* hath besought us to provide him a proper Remedy in this Particular; and we being willing that what is Right and Just should be done to him in this Case, we command you, that by honest and lawful Men of your Bailiwick, ye cause it to be known to the said *George*, that he be before us at *Westminster*, on *Wednesday* next after three Weeks from the Day of *St. Michael*, to shew if he has or knows of any Thing to say for himself, why the said *James* ought not to have his Execution against him for his said Debt and Damages, according to the Force, Form, and Effect of the said Recognizance, if it shall seem expedient to him so to do: and further to do and receive what our said Court before us, shall consider of in this Case, and have you there, at the same Time, the Names, &c.

Proceedings in Ejectment.

A Lease in Ejectment, where the Premises are not inhabited, in order to recover the Possession.

This Indenture, made the three and twentieth Day of *May*, in the fifth Year of the Reign of our Sovereign Lord *George* the Second, by the Grace of God, King of Great-Britain, France, and Ireland, Defender of the

Faith, and so forth, Anno Domini 1680. Between *John Andrews* of the Strand, Victualler, of the one Part, and *John Lilly*, Gent. of the other, witnesseth, That he, the said *John Andrews*, for divers good Causes and Considerations him thereunto moving, hath demised, granted, and to farm letten, and by these Premises doth demise, grant, and to farm lett unto the said *John Lilly*, all that his Messuage commonly called or known by the Name of *Tallow Chandler's-Head*, situate, lying, and being in *Bloomsbury Market-Place*, in the Parish of *St. Giles's in the Fields*, in the County of *Middlesex*, and late in the Possession of one *Henry Duncomb*, to have and to hold the said Premises, with the Appurtenances, from the Date of these Presents, for and until the full End and Term of five Years from thence next ensuing, and fully to be compleat and ended; provided always, and upon Condition, that if the said *John Andrews*, his Executors or Administrators, shall at any Time after the 30th Day of this present *May*, tender to the said *John Lilly*, his Executors or Administrators, one Shilling, then this present Indenture, and every thing therein contained, shall be Void and of none Effect (any thing herein contained to the contrary in any wise notwithstanding.) In Witness whereof the Parties aforesaid have hereto interchangeably set their Hands, &c.

A Declaration in Ejectment by Bill.

A. B. complains of *C. D.* being in the Custody of the Marshal of the *Marshalsea* of our Sovereign Lord the King, before the King himself, for that whereas *E. T. Gentleman*, on the tenth Day of *May*, in the fifth Year of the

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the Reign of our Sovereign Lord *George* the Second by the Grace of God, King of *Great-Britain*, and so forth, at *Westminster*, in the County of *Middlesex*, had demised, granted, and to farm lett to the said *A.* five Messuages, (*reciting the rest of the Parcels*) with the Appurtenances, situate, lying, and being in the Parish of *St. Martins in the Fields*, in the said County of *Middlesex*, to have and to hold the said Tenements, with the Appurtenances, to the said *A. B.* and his Assigns, from the 25th Day of *March* then last past, to the full End and Term of five Years from thence next ensuing, and fully to be compleat and ended; by vertue of which said Demise, he the said *A.* entred into the said Tenements, with the Appurtenances, and was thereof possessed until the said *C.* afterwards (that is to say) on the same tenth Day of *May*, in the sixth Year aforesaid, entered with Force and Arms into the said Tenements, with the Appurtenances, in and upon the Possession of the said *A.* and ejected, drove out, and removed the said *A.* from his said Farm, during his said Term not yet expired; (and the said *A.* being so ejected, drove out, and removed) the said *C.* hitherto hath, with-held from him, and still doth with-hold the Possession thereof, and then and there brought other Injuries upon him, against the Peace of our said Sovereign Lord the King, and to the Damage of the said *A.* twenty Pounds, and thereupon he brings this Suit to recover his Damages by reason of the Premises.

A

*A Declaration in Ejectment by
Original.*

Michaelmas the fixth of King *George* the
Second.

Somersetshire. *A. B.* late of *Taunton* in the
said County, Yeoman, was attached to answer
to *E. F.* of a Plea, wherefore he entred into a
Messuage, a Barn, and a Stable, with the Ap-
purtenances, in *G.* which *H. I.* Gentleman,
demised to the said *E.* for a Term which is
not yet expired, and ejected him from his said
Farm, and did other Wrongs to him, to the
great Damage of the said *E.* and against the
Peace of our Sovereign Lord the King; and
whereupon the said *E.* by *Henry Cruwys* his
Attorney, complains, that whereas the said
H. J. on the first Day of *May*, in the fifth
Year of the Reign of his present Majesty, at
Taunton aforesaid, had demised to the said *E.*
the said Tenements, with the Appurtenances,
for him the said *E.* and his Assigns, to have
and enjoy the said Tenements, with the Ap-
purtenances, from the first Day of *March* then
last past, to the full End and Term of five
Years then next following, and fully to be
compleat and ended: By vertue of which said
Demise the said *E.* entred into the said Tene-
ments, with the Appurtenances, and was pos-
sessed thereof, and being so possessed thereof,
the said *A.* afterwards (that is to say) on the
same first Day of *May*, in the said fifth Year,
with Force and Arms (that is to say) with
Swords, Staves, and Knives, entred into the
said Tenements, with the Appurtenances,
which the said *H. J.* demised to the said *E.*
in the Manner as aforesaid, for a Term which
is

is not yet expired, and ejected the said *E.* out of his said Farm, and did him other Wrongs, to the great Damage of the said *E.* and against the Peace of our said Sovereign Lord the King, whereby the said *E.* says, he is injured and endamaged to the Value of 20 l. and therefore he brings this Suit, *and so forth.*

The Notice.

To Sir *William Buck*, Baronet.

I am informed that you are in Possession, or claim Title to the Premises mentioned in this Declaration of Ejection, or to some Part thereof; and being sued in this Action as a casual Ejector, and I. having no Claim or Title to the same, Do advise you to appear the first Day of next *Hilary Term*, in His Majesty's Court of *King's-Bench* at *Westminster*, by some Attorney of that Court, and then and there, by a Rule to be made of the same Court, to cause yourself to be made Defendant in my stead, otherwise I shall suffer a Judgment to be entered against me, and you will be turned out of Possession:

Your Loving Friend,

Lawrence Lane.

The Common Rule in Ejection.

Michaelmas Term in the sixth Year of the Reign of King *George the Second.*

Surry. It is ordered, with the Consent of the Attornies for both Parties, that *C. D.* be admitted Defendant, instead of the now Defendant

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T. P.

T. P. and that he forthwith appear at the Suit of the Plaintiff, and put in common Bail, and receive a Declaration in a Plea of Trespass, and Ejectment for the Tenements in question, and forthwith plead thereunto not guilty; and that upon the Trial of the Issue, he confess Lease, Entry, and actual Ouster, and insist upon the Title only, otherwise Judgment shall be entered by the Plaintiff against the now Defendant *T.* by default; and if upon the Trial of the said Issue the said *C. D.* shall not confess Lease, Entry, and actual Ouster, by which the Plaintiff will not be able further to prosecute his Bill against the said *C.* then no Costs or Charges shall be awarded upon such Nonsuit, but the said *C.* shall pay to the Plaintiff the Costs and Charges thereupon to be taxed: And it is further ordered, that if upon the Trial of the said Issue, a Verdict should be given for the Defendant, or if it should happen the Plaintiff should not further prosecute his said Bill for any other Cause, than for not confessing Lease, Entry and actual Ouster aforesaid, that then the Plaintiff's Lessor shall pay to the said *C.* his Costs and Charges in that Case to be awarded to him, and so forth.

Judgment in Ejectment for the Plaintiff after a Verdict.

Therefore it is considered, that the said *Charles* ought to recover against the said *W.* his Term yet to come of and in the said Tenements, with the Appurtenances, and the said Damages assessed by the said Jury in Form aforesaid; and also eight Pounds and ten Shillings for his Expences and Costs awarded to the said *Charles*, with his Assent,
by

by his present Majesty's Court here, by way of Increase, which said Damages, in the Whole, amount to ten Pounds, ten Shillings, and six Pence, and the said *W.* shall remain liable to be amerced, and so forth.

Jones and Tully.

Judgment by Default on a Scire Facias in Ejectment on a double Demise.

But made Default, therefore it is considered, that the said *John Jones* may have his Possession of the said Term yet to come of and in the several Tenements aforesaid, with their Appurtenances, and also his Execution against the said *A.* for his Damages, according to the Force, Form, and Effect of the said Recovery by the Default of the said *Arthur*, and so forth.

Judgment in Ejectment by Default by nil dicit upon an Original.

And the said (Defendant) by *A. B.* his Attorney, comes and defends the Force and Injury, and so forth; and hereupon the said (Plaintiff) prays, that the said (Defendant) may answer to his said Declaration; and the said (Defendant) says nothing thereto in bar or to stop the said Plaintiff's Action, but makes Default, whereby the said Plaintiff remains against the said (Defendant) undefended; wherefore it is considered, that the said (Plaintiff) should recover against the said (Defendant) the Possession of the said Term yet to come of and in the said Tenements, with their Appurtenances, and his Damages occasioned

sioned by the said Trespass and Ejectment aforesaid: But because it is unknown what Damages the (Plaintiff) hath sustained by reason of the Trespass and Ejectment aforesaid, the Sheriff is commanded, that by the Oath of twelve honest and lawful Men of his Bailiwick, he diligently inquire what Damages the said (Plaintiff) hath sustained, as well by Reason of the said Trespass and Ejectment, as for his Costs and Expences laid out by him about his Suit in that behalf; And that he cause the Inquisition which he shall take, *and so forth*, to appear before our Sovereign Lord the King at *Westminster*, in three Weeks from the Day of *St. Michael*, under the Seal, *and so forth*, and the Seals, *and so forth*; the same Day is given to the said (Plaintiff); and thereupon the said (Plaintiff) prays his Majesty's Writ of Possession, &c. as hereafter.

Judgment in Ejectment by Original, where the Attorney says he is not instructed to make any Defence, which is what was called Non sum Informatus.

And the said C. by *B. T.* his Attorney comes and defends the Force and Injury, and the Damages, and whatever else he ought to defend, where and when the Court will please to consider thereof; and hereupon the said *A.* prays, that the said C. may make Answer to his said Declaration, upon which the said *E.* says, that he is not instructed by his Client (the said C.) to give any Answer to the above Complaint of the said *A.* nor says he any thing in Bar or Hindrance of the said Action of the said *A.* *Capiatus.* whereby the said *A.* remains against the said C. undefended therein; for which reason it is considered, that the said *A.* ought to recover
against

against the said C. his Possession of the said Term yet to come of and in the said Tenements, with the Appurtenances, and his Damages occasioned by the said Trespass and Ejectment; but because it is unknown what Damages the said A. hath sustained by reason of the said Trespass and Ejectment; the Sheriff is commanded, that he diligently inquire by the Oaths of twelve honest and lawful Men of his Bailiwick, what Damages the said A. hath sustained, as well by reason of the said Trespass and Ejectment, as for his Expences and Costs laid out by him about his Suit in that behalf; and that the Sheriff cause the Inquisition which he shall take thereof to be before our Sovereign Lord the King (if by Original) from the Day of St. Michael in three Weeks, where-ever he shall then be in England; (if by Bill) on Monday next after three Weeks of Saint Michael, under his Seal and the Seals of those, by whose Oaths he shall take such Inquisition; the same Day is given to the said A. to be here before our Sovereign Lord the King; and thereupon the said A. prays a Writ of our said Sovereign Lord the King, to be directed to the Sheriff of the said County, to cause him to have the Possession of his said Term of and in the said Tenements, with the Appurtenances, yet to come, and it is granted to him returnable here at the Time aforesaid, and so forth.

A Judgment for that the Defendant's Attorney says, he is not instructed to make any Defence, which is what was usually called Non sum Informatus, with a Remittitur Dampna.

And the said Matthew Dimock, by John Lilly his Attorney, comes and defends the Force, Injury,

Injury, and Damages, and whatever else he ought to defend, where and when the Court will consider thereof; and hereupon the said *James Hicks* prays, that the said *Matthew* may make Answer to his said Declaration; upon which the said Attorney for the said *Matthew* saith, he is not instructed by the said *Matthew*, his Client, to give any Answer to the said Complaint of the said *James*, nor says any thing in Bar or Hindrance of the said Action of the said *James*, whereby the said *James* remains against the said *Matthew* undefended therein; therefore it is considered, that the said *James* ought to recover his said Term of and in the said Tenements, with the Appurtenances, against the said *Matthew*, and his Damages occasioned by the said Trespass and Ejectment, to be awarded to him, *and so forth*; and the said *James* of his own accord remits and releases to the said *Matthew* all such Damages so awarded to him; therefore the said *Matthew* is acquitted of all such Damages, and the said *James* prays a Writ of our said Sovereign Lord the King, to be directed to the Sheriff of the said County, to cause him to have the Possession of his said Term (yet unexpired) of and in the said Tenements, with the Appurtenances, and it is granted to him returnable, before our said Sovereign Lord the King (if by Bill) on *Monday* next after three Weeks of *St. Michael*; (if by Original) in three Weeks from the Day of *St. Michael*, where-soever he shall then be in *England*: The same Day is given to the said *James* to be there, *and so forth*.

A Writ

A Writ of Habere Facias Possessionem ; or a Writ to cause the Plaintiff to have his Possession of the Tenements in Question.

GEORGE the Second, by the Grace of God of Great-Britain, France, and Ireland, King, Defender of the Faith, and so forth, to the Sheriff of Oxford, greeting: Whereas Richard J. lately in our Court before us at Westminster, by our Writ (if by Original), (if by Bill) then by a Bill without our Writ, and by the Judgment of the same Court recovered against T.B. late of London, his Term (yet unexpired) of and in six Messuages two hundred Acres of Land, forty Acres of Meadow, one hundred Acres of Pasture, and two hundred Acres of Wood-Land, with the Appurtenances, in S. and in the Parish of Stanton Harcourt, in your County ; and also of and in the Rectory of Stanton-Harcourt, with the Appurtenances, in your County, which one W. M. on the seventh Day of April in the second Year of our Reign, demised to the said Richard for a Term of Years which is not yet expired, (that is to say) from the first Day of the same Month of April, to the full End and Term of ten Years then next following, and fully to be compleat and ended ; by vertue of which said Demise the said Richard entered into the said Rectory and Tenements, with the Appurtenances, and was thereof possessed until the said Thomas afterwards, (that is to say) on the same seventh Day of April, in the said second Year of our Reign, with Force and Arms entered into the said Rectory and Tenements, with the Appurtenances, in and upon the Possession of the said Richard, thereof, and ejected, drove out, and removed the said Richard from his said Farm for the said

said Term then and yet unexpired, and still doth with-hold the Possession of the same from the said *Richard*, whereof the said *Thomas* is convicted, as appears to us of Record; And forasmuch as it is considered in our same Court before us, that the said *Richard* ought to have an Execution upon his said Judgment against the said *Thomas*, according to the Force, Form, and Effect of his said Recovery; therefore we command you, that without delay you cause the said *Richard* to have his Possession of his said Term (yet unexpired) of and in the said Tenements, with the Appurtenances, and in what Manner you shall have executed this Precept, do you make appear to us, in three Weeks from the Day of *St. Martin*, wherever we shall then be in *England*, sending back to us this our Writ. Witness *Robert Lord Raymond*, the twenty-third Day of *October*, in the sixth Year of our Keign.

A Declaration for the Mesne Profits in an Ejectment tried Mich. 11. K. W.

Worcestershire. John Durham, late of *Willersey* in the County of *Gloucester*, Yeoman, was attached to answer to *John Underhill*, of a Plea wherefore with Force and Arms he broke and entered into three Messuages, five hundred Acres of Land, two hundred Acres of Meadow, and two hundred Acres of Pasture, with the Appurtenances, in *Treddington* in the County of *Worcester*; and drove out and removed the said *John Underhill* from the Possession and Occupation of his said Tenements, and for a long Time with-held the said *John Underhill* from the Possession and Occupation of the same, (he being

being so driven out and removed therefrom as above) and the said *John Durham*, during all the Time aforesaid, had and received to his own proper Use, all the Issues and Profits of the said Tenements of the yearly Value of two hundred Pounds, and brought other Injuries upon the said *John Underbill*, to the great Damage of the said *John Underbill*, and against the Peace of our Sovereign Lord the King, his Crown and Dignity; and whereupon the said *John Underbill*, by *Giles Taylor*, his Attorney, complains that the said *John Durham*, on the first Day of *June*, in the fifth Year of the Reign of his said present Majesty, with Force and Arms broke and entered into the said *three Messuages, five hundred Acres of Land, two hundred Acres of Meadow, and two hundred Acres of Pasture*, with the Appurtenances, in *Treddington* in the said County of *Worcester*, and drove out and removed the said *John Underbill* from the Possession and Occupation of his said Tenements, and for a long Time (*that is to say*) from the said first Day of *June*, in the tenth Year aforesaid, until the Day of the suing out of the Original Writ of the said *John Underbill*, with-held the Possession and Occupation of the said Tenements from the said *John Underbill* (he being so driven out and removed as above) and also the said *John Durham* had and received to his own Use all the Issues and Profits of the said Tenements of the yearly Value of two hundred Pounds, during all the Time aforesaid, and brought other Injuries upon the said *John Underbill*, to his great Damage, and against the Peace of our said Sovereign Lord the King, his Crown and Dignity; wherefore he says he is injured and endamaged to the Value of 50*l.* and therefore he brings this Suit, and so forth.

A short

A short Historical, as well as Practical, Account of this Action of Trespass and Ejectment.

An *Ejectment* is an *Action* for the *Lessee* for Years, to recover a *Term* when he is ousted, and this is now generally made use of to recover the Possession of Lands; and I hope, I shall be here excus'd, if I give a small *Historical* Account of this *Action*, which I choose to do, not because I would swell this Treatise, which is intended to be confin'd within narrow Limits, and yet to contain as much useful Matter as possible; but because this *Action*, tho' oftener made use of than some others, is not generally so well understood as some Things are, that have more Intricacy contained in them; but I apprehend the Reason of that is, because it is a *Fiction* in Law, and therefore People are not so well acquainted with its Foundation and Institution, and the Reason thereof, as with other Matters that relate to *real Parties*.

By the antient common Law, Lands and Tenements were never recovered in any *personal Action*, but antiently the Writs of *Entry* and *Assize* were the usual Means for the Recovery of the *Possession*, and these lay only against the *Freeholder*, because the Estate for Years was heretofore only a precarious Possession, and therefore to have Actions against such Persons was to no Purpose, because such *Terms* were generally defeated or determined before any intricate Title could be decided, besides these Possessions being so precarious, the *Possessors* were not trusted with the Defence of the Interest of the Land, and if they were

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were ousted, they could only have recover'd Damages for the Loss of their *Possessions*, and if ousted by their *Lessors*, they could seek only a Remedy from their *Covenants*.

Thus the Law continued till the 14 H. 7. And then it began to be resolved, that an *Habere Facias Possessionem* would lie to recover the Term itself.

It seems that these long Terms about this Time had their Beginning, and that since such *Lessees* could not by Law recover the Land itself, therefore they used to go into *Equity* against the *Lessors* for a *specifick Performance*; and against Strangers, to have *perpetual Injunctions* to quiet their Possessions; this drawing the Business into the Courts of *Equity*, obliged the Courts of *Law* to come to a Resolution, that they should recover the Land it self in an *Habere Facias Possessionem*.

But this Resolution brought on a new Method of *Trial* unknown before to the *Common Law*, for then it became usual for a Man that had a Right of *Entry* into any Lands to seal *Leases of Ejectment* on the Lands, and then any Person that next entred on the Freehold was an *Ejector*; and the Conveniency that arose from this Method was, they could try the Title *toties quoties*; whereas, if the Plaintiff was barred in an *Affize*, he was put to his *Writ of Right*; but this was a Means of turning any Man out of Possession, because such Plaintiff would recover his Term without any Notice to the *Tenant in Possession*, and therefore the Courts of Justice would not suffer that they should lose their Possessions without any Opportunity to defend them; wherefore the Court made it a standing Rule, that no Plaintiff should proceed in *Ejectment* to recover his Lands against such a *casual and titular Ejector*,

N.B. 489.

Ejector, without delivering the Tenant in Possession a Declaration, and making him an Ejector and proper Defendant if he pleased.

This was a proper Rule of Court, and in its Power to form; for otherwise the Court would be made instrumental in doing an Injury to a third Person, because a Declaration might otherwise be delivered to a Stranger, a feint Defence be made, and a Verdict, Judgment, and Execution obtained without the Tenant's having any Notice of it: But it is not to be doubted, but that such Actions were brought at first against the real Ejectors that resided in the Possession: But because any Person that came into the Land *Animo possidendi*, was equally an Ejector with him that resided, the Action in Strictness of Law might be brought against him, but because this (as has been said) turned to the Injury of the residing Possessor, the Rule was made, that he should have Notice of it, and therefore they would not give Judgment in *Ejectment*, unless an Affidavit was made, that the Tenant in Possession was served with a Copy of the Declaration. But the antient Practice was, that such Leases were actually to be sealed and delivered, because otherwise the Plaintiff could maintain no Title to the Term, and were also obliged to be sealed on the Land it self, because it was Maintenance to convey out of Possession, and therefore in Relation to the Quickness of the Remedy; the *Affize* had the Advantage, because none of this Preparation was requir'd beforehand, for the Writ of *Affize* came down to the Assizes, and the *Jury* was there warn'd, the *Cause* try'd, and *Judgment* given, yet the Method in *Ejectment* from the Convenience of the repeated Trials, notwithstanding the previous Preparations, was generally preferred.

Thur

Thus it stood till the Time of the Lord Chief Justice *Rolls*, and he invented the Rule now in Use ; which is, that if the Defendant comes into the Room of the *casual Ejector*, he should enter into a Rule to confess *Lease, Entry, and Ouster*, and should stand upon the *Title* only. This Rule was reasonable, because, when the Plaintiff had made his *Lease* upon the Land, any third Person that came upon the Land, *animo possidendi*, in Strictness of Law, was an Ejector, therefore when any other Ejector was placed in his stead, it was very reasonable in the Court to impose Terms upon him, and therefore the proper Terms were, that he should not stand on the Proof of an *actual Entry, Demise, and actual Ouster*, because this was no more than a Form of bringing the Title in Question, it was not fit that the Plaintiff should be nonsuited for want of proving the formal Demise set forth in the Declaration, when the casual Ejector would have let the Judgment go by Default.

I beg leave to mention somewhat of the Writ or Process in this Action ; every Ejectment did antiently begin with a *Pone* as in Trespass, the Ejectment indeed being but a Species of Trespass, for the Ousting of any Person of his Term, comes properly under that Denomination, and therefore the Original was a *Pone* in this Form :

Rex vic Salutem si A. B. fecerit te securum de clamore suo prosequendo tunc pone per vadios & salvos plegios C. D. nuperdo L. Gen. ita quod sit coram Just' nostris apud Westm' (tali die) ostensurus quare Vi & Armis Mamerium de B. quod prefat' T. dimisit A. ad terminum qui nondum preterit intravit & ipsum a firma sua predict' ejecit & alia enormia ei intulit ad grave damnum, &c.

The

New N.
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196.

The Old Writ runs thus :

Intravit & Bona & Catalla ejusdem A. ad Valentiam 10 s. in eodem Manerio inventa cepit & asportavit ipsumq' à firma, &c.

The Form of this Writ seems to have been taken from the *Affize*, which says, *Facias tenementum illud reseisiri de catallis quæ in ipso capta fuerint & ipsum tenementum cum catallis esse in pace usq' ad prim' assisam, &c.* and the Reason why the Writs upon such Disseisins and Ousters ran for Goods and Chattels as well as the Lands, was, because antiently such Disseisins were made by Violence, the Disseisors not only taking away the Lands, but generally also the Stock that were upon them, and for removing such forcible Intrusions of one Lord upon another, by the Power of the King was the *Affize* invented, and after the Model of that was the *Ejectment* framed.

Upon the old Writ the Register has this Remark, that it can't be *de bonis & catallis asportatis*, because of such Goods a Man shall have an Exigent, and in a Writ of *Ejectment* Distress infinite.

But Judge Brown observes, that this Rule was ill taken ; For true it is (says he) that in *Ejectment* Process of Outlawry lies as well as *Distress infinite*, and so is *Fitz-Herbert* : But however the Writ is good either with or without these Words, and the Reason is, because a Man shall accommodate his Writ to the Nature of his Case ; and the Precedents had appeared both ways, according as the Ouster had been with the taking away of Chattels or not ; but the *Affize* has always the Clause *de Catallis*, because they recovered Damages in the *Affize* for the *Mesne Profits*, which was one of the Points complained of in that Writ, and the old Form has always been kept invariable in

Vid. Fitz
New Natura
Brevium
506. Letter a.

in that Action: But an *Ejectment* is not a proper Action for the *Mesne Profits*, though it may comprehend the Chattels that were taken in the very Ouster, because it was never laid with a *Continuando*, as in an Action of Trespass for the Recovery of *Mesne Profits*, and therefore could not comprehend the *Mesne Profits* that were taken during the whole Ouster, since every Act is a new Trespass; but the Assize punishes the whole Disseisin, by giving commensurate Damages from the first Act till the Time of the Action brought as one intire Disseisin.

And here I shall consider only the Process, not having room in this little Treatise to insert all I would say on this Title *Ejectment*, and the Form of the Writ, according to Modern Proceedings, is only considerable in a Writ of Error. The Writ itself, like all other Writs of Trespass, is an Attachment, and the Forms of Attachments run in the same Words, *Pone per vadios & salvos plegios, &c.* Whereas, in other personal Actions, they began with the Writ in nature of a Summons, commanding the Party to restore the thing in demand, before they came to an Attachment; the Reason of the Difference is this, because in this Writ, and in all other Cases of Trespass, the Party complains of a Breach of the Peace, whereon there is a Fine to the King, therefore they give the Party no Warning, lest he should withdraw himself; but in Debt, since the Plaintiff has trusted the Defendant originally, 'tis but reasonable he should give him Credit so much longer till he is summoned to appear.

Besides, in Trespass there was a *Capias* on the Person, because of the King's Fine, which was generally used as the second Process, and therefore

therefore the first was upon his Goods; whereas, in other personal Actions, the whole Process at Common Law was on the Goods only.

Upon this Attachment the Sheriff returned Pledges *de prosequendo* in behalf of the Plaintiff, and Pledges for Appearance in behalf of the Defendant, and these were twofold, either proper Persons who undertook his Appearance, or else attached his Goods which were forfeited on his Non-appearance. In the former Case, Pledges for the Plaintiff were taken by these Words in the Writ, *Si Afecerit te securum de Clamore suo prosequendo*; in the latter Pledges for the Defendant were by these Words in the Writ, *Pone B. per vad' & Salu' Pleg'*, and so it was in an Assize, where are the same Words in the Writ. Upon which see the Sheriff's Return in the *Commentaries*.

F. N. B.

200.

New N.

Brev. 506

The second Step in this Action was either by *Capias* or Distress infinite, the Distress was the Process of the Party, and the *Capias* was the Process of the King; for in all personal Actions they proceeded by *Summons*, *Attachment*, and *Distress infinite*: In all Criminal Prosecutions, and in all Prosecutions for Fines for the King, they proceeded by *Capias*: But in Trespass, where the King required his Fine for the Plaintiff's Prosecution, the Plaintiff took hold of the King's Process to oblige the Party to appear.

F. N. B.

92. Brit.

Cap. 26.

f. 52, 82.

H. 3. c. 7,

9, & 12.

Co. 2 Inst.

254.

If the Party was attached by Goods or Pledges and did not appear, the *Distress* issued out upon all his Goods and Lands to compel him to appear, which was called the *grand Distress*, or *Distress infinite*; but if the Sheriff returned *nil* upon the *Pone*, then they proceeded to *Capias* and *Outlawry*, and the reason was, because it appeared by the Sheriff's Return, that the Defendant had nothing whereby

whereby he could be compelled to appear, and the Defendant had a Remedy if the Sheriff did not actually serve the *Attachment*, because the Trial of Service of such *Attachments* was by Examination of the Sheriff's Officers, and the Plea of not being attach'd by fifteen *Jurors*, was always tried by their Examination, and therefore there was no false Return against the Officer for returning a *Nil*; and the rather, because the Party was little, if at all, prejudic'd, since he was discharged from the Arrest by making a proper Appearance; hence it came to pass, that the *Capias* at length issued as the first Process, without any *Nihil* returned on the *Pone*, and so when the *Capias* was given in Account by the Statute of *Marlebridge*, which was given to the Lords when their Bailiffs had nothing to answer, they first returned *Nil* on the *Summons*, and then the *Capias* issued; but for the former Reason the *Capias* afterwards issued in *Account* as the first Process, and so in Debt, which was in the Similitude of *Account* by that Statute.

If in Ejectment it be said, that the Defendant was summoned to answer, and not attached, the Declaration is ill upon a Demurrer, but after a Verdict and Writ of Error brought, if no Original be found, whereby it appears, there was a vicious Proceeding by *Summons*, it's aided by the Statute of *Jeofails* of the 18 *Eliz* c. 14. which makes the Proceedings good after Verdict, tho' the Original be wanting, and tho', if there had been a vicious Original upon the File, it had been Error, yet, while there is no Original upon the File, it is helped by that Statute, and they'll intend that there was a good Original which is lost, and that the Clerk had misrecited such good Original.

Br. Attachment c.
12, 17,
18. 9 Co.
31.
Booth 9.

2 Inf. 143.
144.

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I come

I come now to the Modern Process in this Action, and now, it is not usual to make out a *Capias* against the *Possessor* upon an *Ejectment* delivered, as it was of Old, when Men were ousted of Terms for Years, but they deliver a Declaration to the Tenant in Possession in the Name of the *casual Ejector* in this Manner, with a Notice in the *casual Ejector's* Name.

J. D. you may perceive by this Declaration, that I am sued as *casual Ejector* for the Lands and Tenements within specified in your Possession, (whereunto I claim no Title) I do therefore hereby give you timely Notice, that unless you appear and defend your Title this next Term, I will suffer Judgment to pass against me by Default, whereby you will be turned out of Possession; your loving Friend *A. B.* 29 Decemb. 1710.

*N. the act
of 4 K. G.
2.*

The Service of this Declaration, before the late Act of Parliament, must have been made either to the Tenant himself, or to his Wife, and not to any of his Children or Servants, and the reason was, because the Tenant, by having explain'd to him what was the Meaning of the Declaration, had sufficient Warning to defend himself, and this the Court did not think reasonable should come at second hand to the Tenant, unless from the Wife, who is presumed to be equally concerned in point of Interest, and in that it differs from a *Summons*, which might be either delivered to the Tenant, or upon the Land by the Sheriff's coming upon the Land, and summoning the Party to appear by setting up a white Wand, which antiently was a Mark that the Land was claimed by others.

After this Declaration delivered, the Plaintiff's Attorney was obliged to make Oath, that he delivered to *J. D.* Tenant in Possession

sion of the Premises in Question a true Copy of the annexed Declaration, with the before-mentioned Indorsement or Supercription thereon, which said Indorsement, &c. the Depo-
nent did then read to the said J. D. and acquainted him with the Contents thereof.

This Affidavit was to be positive, that J. D. Lilly P. was Tenant in Possession, or that the Defendant R. 499. acknowledged himself to be so, because no Man should be turned out of Possession without a positive Affidavit, on which he might charge the Defendant with Perjury.

Upon this Affidavit they moved for Judgment against the casual Ejector, which was granted, unless the Defendant in due Time entered into the Common Rule; and the Declaration against the casual Ejector ought to be delivered before the Effoin-Day of the Issuable Term, when the Cause is designed to be tried; and it hath been adjudged, that there ought to be a *Latitat* sued out against the casual Ejector and common Bail filed, otherwise the Judgment may be set aside on Motion, 2 Show. 249. Boucher and Friend.

The Rule in the *Common-Pleas* may be seen amongst the Proceedings in the *Common-Pleas*, and the Rule in the *King's Bench* is as herein before-mentioned.

These Rules being made by Assent of Parties, an Attachment lies for Non-performance of them, as for all other Rules of Court that are disobeyed, and this is all the Remedy which the Parties on both Sides have for their Costs, that J. H. who claims Title, &c. and if there be several Persons that claim Title, the Rule may be drawn generally or particularly, generally that J. H. who claims Title to the Premises in Question in his Possession, should be admitted Defendant for such Messuages,

and this puts a Necessity on the Plaintiff at the Assizes to distinguish by Proof what Tenements are in each Defendant's Possession, because by the Rule he is to confess Lease, Entry, and Ouster, only for the Lands in his Possession; and if the Plaintiff can't distinguish by Proof what Tenements are in each Defendant's Possession, he can have no Verdict against him, and consequently no Judgment.

Lilly P.
R. 497.
Keb.
677.

Or the Rule may be drawn specially, that J. H. who claims Title to such Lands, expressing them particularly, should be admitted Defendant, and that supercedes the Necessity of Proof that the Lands are in his Possession; and if the Defendant's Attorney will not give a Note of the Particulars of the Land for which he was admitted Defendant, the Plaintiff may summon him before a Judge, who will order the Rule thus specially to be drawn up, in case the Party in Possession will admit himself to be Defendant; but because the Defendant's Attorney is to draw up the Rule, it being entred into by his Consent, it's often drawn up in general Terms, which puts the Plaintiff to his Proof at the Assizes, for tho' the Rule for Judgment against the casual Ejector be drawn up by the Plaintiff, yet that is only for Judgment against such Ejector, in case the Tenant in Possession does not enter into the common Rule by a limited Time, which puts it upon the Defendant to draw up the common Rule, who is to draw it up, and leave it at the Judge's Chamber, and give Notice of it to the Plaintiff's Attorney.

Lilly's P.
R. 499.

L. P. R.
499.

No Person is admitted to defend in Ejectment unless he be Tenant in Possession, or hath been in Possession, or receives the Rent; because it's an Act of Champerty for any Person to interpose, to cover the Possession with
his

his Title; and if the Party would make any Person Defendant with another, who was not concerned in the Possession of the Tenements, this was a Mischief at Common Law, because recovering against one of the Defendants, there was consequently no Remedy for the Stranger for his Costs, but that is remedied by 8 and 9 Will. 3. c. 10. whereby Costs are given to such Stranger, who is made Defendant, unless the Judge certifies immediately on the Trial, that the Plaintiff had a probable Cause for making such Stranger Defendant.

Lilly's P.
R. 300.

The Rule in the *Common-Pleas* is, that he shall forthwith appear, put in common Bail, and receive a Declaration, this supercedes the Necessity of an original Writ, because the Tenant is to appear, and receive a Declaration, and therefore can't take any Advantage for want of an Original, unless in a Writ of Error, but when a Writ of Error is brought, they must file an Original, unless it be after a Verdict, when it is helped by the Statute.

As in the *Common-Pleas* there is no need of an Original, so in the *King's-Bench* there is no need of a Latitat, or Bill of Ejectment, but the Party must file a Bill of Ejectment, besides the Plea-roll, in case a Writ of Error be brought before the Errors are assigned, tho' he must file Bail before he can proceed; the Reason of which is, that the Court has no Authority to proceed in Ejectments by Bill, unless the Defendant be in Custody; therefore Bail by the Rule is ordered to be filed, that the Court may have Authority to proceed, but they don't file a Bill in the Office against such a Person as a Prisoner of the Court, suggesting he is delivered to Bail, because he is bound by the Rule to receive a Declaration, and so they need only make up the Plea-roll,

until a Writ of Error be brought, and then they must file their Bill of Ejectment, because in the Writ of Error no Notice is taken of the Rule, and therefore a Bill must be filed against the Person, as the Prisoner of the Court, that a proper Person privileged may appear to the superior Jurisdiction, and a proper Suit commenced against him.

But in the *King's-Bench* they may proceed by Original, as well as by Bill, because in like Manner as they may proceed against any Person privileged or bailed by the Court; so also they may have an Original in this Court, because it is an Action of Trespass, which is originally cognizable in this Court, it being a criminal Cause, for which there is a Fine due to the King, and then there is a Declaration delivered as in the *Common-Pleas*, that the Defendant was attached to answer, &c.

And there is this Benefit in proceeding by Original in the *King's-Bench*, that there is no Writ of Error but in Parliament, and therefore the Writ of Error can't be allowed but in the Intervals of Parliament; and the Reason is, because no Writ of Error lay out of the Court in which the King was supposed to reside in Person, but the Legislature and the King were supposed to reside in the Court where criminal Offences were punished, because it was Part of that high Office to preserve the publick Peace by Animadversions on such Offenders; and when the Court of *King's-Bench* had acquired a Jurisdiction in civil Causes by way of Privilege relating to the Prisoners of their own Court, it became necessary, that Subjects should not be disappointed of their Writ of Error, either by the not sitting of Parliament, or by their being employed in publick Business when they did sit, and there-

therefore the Statute of the 27 *Eliz. c. 8.* gave a Writ of Error in the *Exchequer-Chamber* in civil Actions, among which are Ejectments, but it excepts the Case where the King is Party, and the King is supposed to be Party in all Actions which punish Trespasses in a criminal Manner, as the Ejectment is when it commences by original Writ, returnable in the *King's-Bench*, and therefore there lies no Writ of Error but in Parliament on a Judgment given in *Banco Regis* upon an Original.

Formerly, in the 17th Year of *Car. 2.* the Court published a Rule, that they would not allow any Person to take Judgment against the casual Ejector without a Certificate that a Latitat was taken out, and Bail filed, because the Court had no Authority to proceed without the Defendant appear'd to be a Prisoner of the Court, unless by way of Original; but now such Motion is granted without a Certificate, because its sufficient, if the Bail be filed, for a casual Ejector after the Rule drawn up, but Bail must be filed for the casual Ejector, before you can oblige the Tenant in Possession to accept the Declaration, since there is no Cause in Court against the casual Ejector, in whose Place the Tenant in Possession comes till Bail is filed against him, and therefore he is not obliged to accept a Declaration or to confess Lease, Entry, and Ouster at the Assizes, till Bail be filed, and if no such Bail be filed by the casual Ejector, and the Plaintiff goes to Trial against the Tenant in Possession, the Court will set aside any Judgment given against the casual Ejector; but if no Bail be filed in Ejectment, and a Writ of Error be brought, and it appears by the Attorney's Books, that the Attorney had

his Fee to file Bail, and the Attorney was dead, there the Court ordered Bail to be filed *nunc pro tunc*, that no Error might appear upon Record, because as it was on the Part of the Defendant to file Bail, therefore he shall not be allowed to take Advantage of his own Error, and tho' the Plaintiff proceeded without any Bail filed by the Defendant, yet since the Defendant's Attorney had his Fee to file such Bail, and as there was no proper Remedy against the Defendant, because he had given the Fee; nor against the Attorney, because he was dead; therefore it became the Justice of the Court to set it right, that the Plaintiff might have no Mischief.

But there is no Necessity for a *Latitat*, because if the casual Ejector files common Bail, he admits himself a Prisoner of the Court, for being admitted out to Bail, implies he was once a Prisoner, and whether he came into Court regularly by *Latitat*, or not, yet the Judgment is not *coram non Judice*.

If the casual Ejector accepts the Declaration, pleads, and thereby Judgment is given against him, the same is recorded; and it appears thereby, that he has taken a Declaration, as a privileged Person, so if the Tenant in Possession makes himself Defendant, and accepts a Declaration, he must file common Bail according to the Rule, but there is no need of a *Latitat*, because the *Latitat* is no Part of the Record; since by filing common Bail, he acknowledges himself to be a privileged Person, and then the Suit has as good a Commencement as it had a Beginning from the Bill. If a Party does not come to the Assizes, and confess Lease, Entry, and Ouster, according to the Rule, when he has accepted the Declaration, he can have no Writ of Error, because
he

he is no Party to the Record against the casual Ejector, and consequently can have no Writ of Error thereon; and if upon the Declaration delivered to him, the Plaintiff is *non Pros'd*, yet the Defendant has not any Judgment thereon, to be corrected in a Writ of Error, but the Judgment is against the casual Ejector upon the other Record, because of the Words, *Et super triationem exitus cognovit Dimissionem intrationem & actualem Ejectionem, &c.*

Note, The Judgment against the casual Ejector can't be enter'd till the *Postea* be returned, which is endorfed, that the Non-suit was for want of confessing Lease, Entry, and Ouster, for it does not appear, that the Defendant has not complied with the Rule, till after the Assizes, at which the Cause was to have been tried, and therefore the Judgment can't be enter'd till the next Term after such Assizes.

1 Keb.
249. Sir
H. Middleton's
Case.

If the Cause be adjourned for Difficulty into the *Exchequer* Chamber, since the Court itself delays the Plaintiff, they will upon a Rule delivered to the Defendant, to shew Cause to the contrary, enlarge the Term, unless the Defendant can shew very good Cause to the contrary, because the Defendant having enter'd into a Rule to confess a Lease, without mentioning the Term, it must be understood to be such a Lease, as is adapted for the Trial of the Plaintiff's Title, especially, since the Defendant, by coming into the Room of the casual Ejector, had delay'd the Plaintiff from getting the Possession; for tho' it may be said to be the Plaintiff's Fault for not delivering a Declaration of a Term large enough, whereon to get Judgment: yet since the Defendant delays him by the Permission of

the Court, it is not fit the Original Shortness of the Term should turn to his Prejudice.

Salk. 257

But this Case is said in *Salk.* to be done by Consent of Parties; that is, that the Court would not take farther Time to adjourn, and deliberate where the Term was near spent, unless the Parties would consent to enlarge it, even where the Parties were hung up by an Injunction from the Court of Chancery, the Court refus'd to enlarge the Term without the Consent of the Parties, because, that would be to erase and alter the Record of the Plaintiff's Declaration, which they will not do without Consent.

The Court hath changed the Plaintiff in Ejectment after the Declaration delivered, and hath enlarged the Term, where the Cause hath been long in Agitation, and Judgment entered against the Plaintiff after he is dead.
5 *Mod.* 333.

1 *Vent.*

355.

2 *Vent.*

125, 4.

In Ejectment, where there are divers Defendants for the same Premises, and one appears, and confesses Lease, Entry, and the other does not, the Plaintiff can't proceed against the rest; but he must be nonsuited, because both the Defendants not admitting the Demise, and the Plaintiff not proving an actual Entry and Demise, he can't maintain his Declaration, but if there appear'd any Covin between such Persons not appearing, and the Lessor of the Plaintiff; the Court will stop the Judgment against the casual Ejector for their Parts that did not confess Lease, &c. because a Declaration was delivered to each of them for their respective Parts, and therefore where one does not pay Obedience to the Rule, the Plaintiff has Judgment against the Ejector for his part only.

And

And where there are several Defendants, to whom the Plaintiff delivers Declarations, that are severally concerned in Interest, and the Plaintiff moves to join them all in one Declaration, yet the Court will not do it, but the Plaintiff must deliver several Declarations to each of them, because each Defendant must have a Remedy for his Costs, which he could not have, if they were joined in a Declaration, and the Plaintiff prevailed only against one of them, and by this means, the Plaintiff might have a Tenant of his own, Defendant, with others, in order to save the Costs. 2 Keb. 524.

The Plaintiff in Ejectment, tho' he is but nominal, yet if he be not found, or if he be not able to pay the Costs, the Attorney or Solicitor is liable, or may be committed until he pay the Costs, or produce a Plaintiff that is able to pay them; *Honloe, Peters and Bucks.* 6 Mod. 309. 2 Lev. 66.

If the Plaintiff in Ejectment, who is but nominal, dies, yet the Action shall not abate, because if there be any other Person of the same Name, the Court will intend him to be the Person mentioned in the Declaration, because he is only nominal; and therefore while there is any Person of the Name living, the Lessor of the Plaintiff, who is only concerned in the Interest, may proceed in the Suit. 3 Keb. 772.

But if the nominal Plaintiff releases to one of the Tenants, in Possession, who is made Defendant, such Release is a good Bar, because the Plaintiff can't recover against his own Release, since he is Plaintiff on Record; but *Quere*, if such Release were pleaded, whether the Court would not permit the Lessor of the Plaintiff, to change the Name of such nominal Plaintiff? For his Release is said to be a Contempt. Brownl. 128 to 133. Salk. 260.

The

1 Saund.
319. 1 Sid.
23.
Mod. 10.
1 Vent.
42. 3; 32.
3 Keb.
212.
1 Vent.
248.
3 All.
245.

The Confession of Lease, Entry, and Ouster, is not a Confession of any Entry sufficient to make out the Plaintiff's Title; where an Entry is necessary thereunto, as if an Entry was necessary to avoid a Fine, and by C. J. Holt, or to take Advantage of a Condition broken, but C. J. Hales allow'd, that the Confession of such Entry, was Evidence of an Entry, if the contrary did not appear, as if the Ejectments were delivered within the Time prescribed by the Statute, to avoid a Fine, but this now is totally disallowed, and an actual Entry must be proved, where it is necessary to compleat the Plaintiff's Title. 1st. Because the Defendant is compellable by the Court to confess Lease, Entry, &c. and to make that a Proof, that there was an actual Entry, which was extorted from the Defendant, and upon that Presumption, to turn the Defendant to prove the contrary, were to compel the Defendant to the Proof of a Negative, which in all Cases is difficult, and in some, impossible to be done.

Besides the Words of the Rule are, that the Defendant shall confess Lease, &c. and insist *juxta Titulum tantum*, and therefore the Intention of the Court, was, that the Tenant in Possession should insist upon every Thing that was necessary for the Defence of his own Title, and such is the Denial of the Plaintiff's Entry, in establishing his own Title, and therefore it is a Point, that by the Rule he may insist upon, notwithstanding such Confession.

1 Ward.
248.
248.
248.

If A. lets to B. and B. to C. to try the Title, the Confession of Lease, &c. extends only to the Lease, made to C. and not to that made to B. because the Confession by the Rule extends only to the Lease made to try the Title, and not to the Lease, which is part of the Title.

Title of the Lessor of the Plaintiff, and Hale admitted this, when he ruled the Entry to be confessed by the formal Confession of Lease, &c. for he thought that where an Entry was confessed, and a Lease, as tho' it had been made upon the Land, that thereby a Claim was confessed to the Fee-simple of the Land it self; for a Confession of Entry to let, he understood to be a Confession of a Claim of the Fee-simple, because, otherwise, he could not have Power to demise, which is confest by the Rule, but notwithstanding in this Case, the Lease, in order to try the Title, being a distinct Lease from that, by which the Lessor of the Plaintiff claims, he held, that, must be proved.

My L. C. J. *Hales*, when he held, that the Entry was sufficiently confessed by the Rule, said, that otherwise an Entry would be necessary to be proved on every Disseizin, and, indeed, before this new Rule, an Entry was necessary, in order to give the Plaintiff Power to make a Lease, but after that, it was otherwise, because an Entry did not make part of the Plaintiff's Title, where the Lessor of the Plaintiff is disseized, for he had a compleat Title before the Disseizin, which was that Injury done to him, and should have recovered Damages in an Assize from the first Act of Disseizin, and the Design in Ejectment was without the formal Preparation of an Entry, and Lease to bring the Cause to as sudden a Trial, and in as short a Method, as had been formerly used in an Assize.

Note, if a Man enters and delivers a Declaration in Behalf of the Lessor of the Plaintiff, this is no Entry to avoid a Fine, unless an expresse Authority was given to enter for that Purpose; because the Entry must be pur-

suant

purſuant to the Intention, and that was, to deliver a Declaration, in order to try the Plaintiff's Title, and not to make any Title to the Leſſor of the Plaintiff.

Aliter Judicium intretur pro default. pro Quer.

From hence it is, that Judgment is given againſt the caſual Ejector for want of confeſſing Leaſe, &c. at the Aſſizes; and if the Defendant does not enter into the Defence, and confeſs Leaſe, &c. he can't bring a Writ of Error to reverse a Judgment, to which he was not a Party, and if he brings ſuch Writ in the Name of the caſual Ejector, the caſual Ejector being a Friend to the Plaintiff's Leſſor, may either releaſe the Errors, or upon a Motion for a *non Prof.* the Court will order it to be entered; but in a Writ of Error from an inferior Court in the caſual Ejector's Name, the Court will not enter a *non Prof.* tho' his Releaſe of Errors be ſhewn, becauſe they ought not to proceed in this compendious Way, by confeſſing Leaſe, &c.

By the Words of the Rule antiently made, it appears, that the original Practice in *Banco Regis*, was, that upon confeſſing Leaſe, &c. the Defendant paid no Coſts for it.

Ante f.
50.

Thus the Words of the Rule differ'd from that of the *Common-Pleas*, which are, that the ſaid Defendant ſhall pay to the Plaintiff, his Coſts to be taxed by the Prothonotary thereon; but in *Banco Regis*, the Rule only excuſed the Plaintiff from the Coſts of the *non Prof.* in caſe the Defendant did not at the Aſſizes confeſs Leaſe, &c. and therefore in 13 *Car. 2.* upon a Motion, that the Defendant ſhould pay Coſts for not confeſſing Leaſe, &c. it was denied, but afterwards the Rule came to be, that upon the Defendant's denying at the Aſſizes to confeſs Leaſe, &c. the Rule for

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confessing it should be carried to the Master, who tax'd Costs upon it, which Costs were to be demanded of the Defendant, by some Person having Authority from the Plaintiff's Lessee, for so doing, and if the same were not paid, the Court, upon Affidavit and Motion, would grant an Attachment against the Defendant, for it is but reasonable, that when the Plaintiff is at Charges to bring his Witnesses to a Trial, the Defendant that deprives him of the Benefit of that Trial, should pay his Costs; and the new Rule now runs, *Et si super triationem exitus illius prædictus A. recusat performare istam regulam & querens rationem inde non prosequi potest breve suum tunc taxatio Custagiorum super hujus modi non prosecutione cessabit. & prædictus A. solverit talia Custagia querenti qualia per Curiam Domini Regis hic taxabuntur & adjudicabuntur pro tali defectu suo in non performance hujus regulæ & judicium intrabitur versus eundem C. modo casualem ejectorem per defaultum. Et ulterius ordinatum est, quod si veredictum redditum fuerit pro prædict (the Defendant) vel quod prædict quer' non Pros' foret propter aliquam aliam Causam quam pro non Cognitione Dimissionis, &c.* and so to the End of the Rule. So that it appears by the new Rule, that the Practice was altered in compliance with the *Common-Pleas*, that the whole Business of Ejectments might not run thro' that Court.

If an Infant be Tenant in Possession, and the Plaintiff obtains Judgment against the casual Ejector for want of Confession of Lease, &c. and the Infant brings a Writ of Error in the casual Ejector's Name, and the Defendant in Error, sets up a Release from the casual Ejector, upon making this out to be the Case of the Infant, on Motion on the Writ of Error,

L. P. R.
504. 1.
Keb. 502.
Willf. &
Hale.

Ante 50

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the Court will not suffer such a Release to be pleaded in Bar to such Error, because there is no Latches to be imputed to the Infant, for want of Confession of Lease, &c. and therefore here they renew the old Practice, to suffer the Defendant below, to carry on the Suit in the Ejector's Name to the End.

1 Keb.
327.

If there be Baron and Feme Lessor in Ejectment, and one dies after entring into the Rule, the surviving Person is liable to pay Costs, because Costs are to be paid *per Dimisforem quer'* and both of them are in the Lease.

1 Keb.
327.

If a Stranger carries on a Suit in another's Name, who has a Title, and yet is so poor that he can't pay Costs; in case he fails, upon Affidavit of this Matter, the Court will order such Person, who carries on the Suit, to pay Costs to the Defendant.

If an Infant delivers a Declaration to the Defendant, some Friend or Guardian must be set up as Plaintiff to answer the Defendant's Costs. But if such Person dies insolvent, so that the Defendant has no Remedy by this Rule, the Infant himself must answer the Costs, because the Rule was enter'd into for the Infant's Benefit, and even Infants must not disturb the Possession of others by unlawful Entries, without being punish'd with Costs.

1 Sid.
379.

If a Man has a Verdict in Ejectment, and Costs taxed, and an Attachment issues for non Payment of the Costs, the Defendant shall not have an Ejectment against the Plaintiff in the same Court, till he has paid Costs, but he may proceed in Ejectment in another Court, without Costs paid; the Reason is, because the same Court will see an Obedience paid to their Rules, before they will suffer the disobedient Person to proceed in a Cause of

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the same kind, but another Court can't take Cognizance of the Rules of a distinct Court, but every Court can inforce Obedience to its own Rules.

I shall here take Notice in what Cases they must proceed in the old Method, and where they could not have proper Remedies by proceeding in the modern Way by Confession, &c. and this, before the late Act of Parliament, was in the following Cases.

Salk. 255

First, Where the Houses, or Things, for which the Ejectment was brought were empty, for in that Case no Declaration could be delivered, or Affidavit made of the Delivery of it, and then the Court could not proceed to grant Judgment against the casual Ejector; and therefore they were forced to proceed the old Way, by sealing a Lease on the Land, and give Rules to plead; and when those Rules for Pleading were out, they were to make an Affidavit of this whole Matter; and upon such Affidavit, the Court granted Judgment, but there could be no Judgment against the casual Ejector, without moving the Court, tho' the Rules for pleading were out, because the Court will not grant any Judgment against the casual Ejector, who is only nominal, without such proper Affidavit; lest, otherwise, a third Person should be trick'd out of his Possession.

So if the Tenant in Possession kept his Door shut, the best way was to seal a Lease on the Land as usually, before these Rules were invented, but it seems in Case, that the Practice and Fraud of the Tenant had been made appear to the Court by Affidavit, the Court would grant Judgment against the casual Ejector, *nisi*, &c. for then the Fraud of the Tenant superseded the Necessity of giving Notice.

15 Car. 2.
B. R. P.
Mo. 101.

Notice to him ; but by the following Act of Parliament it may be perceiv'd the Law is alter'd therein.

Secondly, When a Corporation is Lessee of the Plaintiff, they must give a Letter of Attorney to some Person, to enter and seal a Lease upon the Land ; for a Corporation can't make an Attorney, or Bailiff, but by Deed, nor can they appear, but by making a proper Person their Attorney by Deed ; therefore they can't enter and demise upon the Land in Person, as natural Persons can, nor can they substitute an Attorney, to enter into a Rule for their Costs, nor will an Attachment go against them for Disobedience to that Rule, and by Consequence they are put to make an actual Lease upon the Land, which Lease must try their Title, and then the Attorney may proceed in the common Method, that is not alter'd by the said Statute.

Dy. 86 in
the Mar-
gin.

If a Corporation be aggregate of many, they may set forth the Demise in the Declaration, without mentioning the Christian Name of the Master or Wardens of the Corporation ; but if the Corporation be sole, the Name of Baptism must be inserted, as if the Demise be made by a Bishop, because where the Corporation is aggregate, the Name solely consists in its Character, but where sole, it consists totally in that Person, therefore you have no sufficient Specification of that Person, without mentioning his Name.

Thirdly, The third Case in which the old Method is to be observed, is, where the several Interests of the Lessors of the Plaintiff be not known, and there, it is a good Way to seal a Lease upon the Premises, lest they should fail in setting out in their Declarations the several Interests which each Man passes ;

and

and in that Case it is the best Way to proceed in the old manner, even now.

Fourthly, Where the Proceedings are in an inferior Court, there they must proceed by actually sealing a Lease, because they can't make Rules to confess Lease, &c. inasmuch as such Courts have not an Authority to imprison for Disobedience to their Rules; and the Reason is, the inferior Courts, having but a limited Authority, can't make any new Rules to bind Persons that don't come in by proper Process of such Court; but the Courts above, having an unlimited Authority in every thing within their Jurisdiction, shall bind any Person that consents to their Rules; and therefore in such inferior Courts the Lease is sealed on the Land, and the Defendant tries the Title in the Name of the casual Ejector, to save Expence.

1 Keb.
795.

If an Ejectment be brought in an inferior Court, and a *Habeas Corpus* be brought to remove it, and the Plaintiff in the Ejectment declares against the casual Ejector, there may be a Rule to confess Lease, &c. as if he had originally declared in the Court above, and the Court will not grant a *Procedendo*.

1 Keb.
795, 6.
Herm. &c
Cock.
1 Sid. 331.

If a *Habeas Corpus* be brought to remove a Cause in Ejectment out of an inferior Court, and the Lands lie within their Jurisdiction, and the Lessor of the Plaintiff seals a Lease on the Premises, the Courts above will grant a *Procedendo*, because the Title of the Land is a local Matter, properly within the Jurisdiction of the Court below, where, if they proceed regularly, they shall not be prohibited; but if the Lessor has not sealed a Lease on the Premises, they will not.

1 Sid. 331.
Cr. Car.
82. d.
2 Keb.
119.

But if the Lands do lie partly within the *Cinque Ports*, and partly without, the Defendant

2 Keb. 69.

dant can't plead above the Jurisdiction of the *Cinque Ports*, for tho' the Land be local Matter, yet the Demise is transitory, and triable any where; therefore, tho' the Plaintiff may lay his Action for that which lies within an inferior Jurisdiction in the Court below, if he takes proper Measures for that Purpose; yet if he will lay it above, since the Demise is transitory, the Defendant can't stop his Proceeding, because the Courts above, for such transitory Matters, have a proper Jurisdiction.

M. 18.
Car.B.R.
Moore
86.

1 Keb.
785.

It seems, that if the Defendant in an inferior Court comes into a Rule to confess Lease, &c. and the Cause be removed by *Habeas Corpus*, and the Judge of the inferior Court grants an Attachment against the Defendant for Disobedience to the Rule, the superior Court will grant an Attachment against such Judge for compelling Obedience to their Rules, and thereby obstructing the Business of the superior Courts, since the Defendant is not bound by the Rule he entered into in the inferior Court, such Rule being only the Practice of the superior Courts.

I shall here shew the Manner of the old Way of proceeding in Ejectment; and that was, by sealing a Lease on the Premises by the Party in Interest, who was to try the Title.

This at first was ruled to be no Maintainance, or within the Statute for buying of Titles, since the Lessor demises on the Land, and so is in Possession, the Lease was made to Servants or Friends that could not be presumed to maintain or countenance the Action; but if it were sealed to a Great Man, who might maintain the Suit, this was properly Maintainance.

Styles P.
R. 165.

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If a Man seals a Lease upon the Premises, he need not give Notice to the Party in Interest, at the Time of his Entry, or sealing such Lease; but it is sufficient to give Notice to the Tenant in Possession afterwards where it was done, that being sufficient Notice for the Party to make his Defence; and it is not necessary, that the Plaintiff should give Notice of his Preparation, but of his Trial.

By the antient Method, the Person, that had Title of Entry, used to enter upon the several Parcels of the Land, and deliver Declarations in the Name of his own casual Ejector, who did actually enter on the Premises to eject, but the Court required Notice to the Tenant in Possession, that he might not be turned out without an Opportunity of making his Defence, and then such Tenant in Possession used to move the Court, that as the Title of the Land belonged to him, he might defend in the casual Ejector's Name, which the Court, upon an Affidavit of that Matter, used to grant, and that the Suit should be carried on in the casual Ejector's Name, the Tenant in Possession saving him harmless, and then the casual Ejector was not permitted to release Errors in Prejudice of the Tenant in Possession, since the Suit was carried on in his Name by Rule of Court, and the Process for Costs was taken out against the casual Ejector, and he was obliged to put the Bond of the Tenant in Possession in Suit, who undertook to save him harmless.

In the old Way of proceeding in Ejectment, if there were several Parcels of Land, in the Possession of several Persons, the Way was, to make several Leases, and to deliver several Declarations upon such several Leases to the Tenants

Sty. Rep.
468. Ray.
93.
1 Keb.
705, 740.

Co. Lit.
52. Palm.
402.

Tenants in Possession, and that was absolutely necessary when the Freehold was in distinct Persons; but where the Freehold was in the same Person, there the Difference was, whether it was in the County, or not; for where different Entries were necessary, there were to be different Leases; and before the late Act of Parliament, where there was one Disfeisor of Lands in one County, tho' he demised for Years, or at Will, to several Persons, yet I might enter upon one of such Lessees in the Name of all, and make a Lease according to the old Method, and comprehend them all therein; and the Reason was, because the Entry to divest Freeholds must be made according as the Freehold divides itself; and therefore, if the Disfeisor had made a Lease for Life to three several Persons, the Entry must have been several, and the Leases several also; but if one had disseized me of two Acres in the same County, and I entered into one, without saying in the Name of both, such Entry did not divest the Right; and therefore where there were several Acres put in the same Declaration, and they make their Entry in the old Way, it must have been in the Name of all the Acres named in such Declaration, because otherwise, the Entry being not interpreted by Words, the Act of Entry should go no farther than the lowest Measure of Land into which he entered.

Digest.

Feud. v.

lib. 2. tit.

8. tit. 2.

Donarius

441. 2.

To understand this, we must consider, that the Entry was the same thing with the Vindication of *Calumnia* in the Civil Law, and this Entry was of equal Notoriety with the Feoffment, for as the Feoffment was antiently made upon the Land *coram paribus*, who subscribed the feudal Instrument in *his testibus*; so it seems the Entry was made upon the

Land

Land, and afterwards the Claim recorded in the Lord's Court, and hence called *Clameum*, *vel Calumnium apponere, vel Advocare*; but afterwards they allowed the Feoffment to be good, tho' it was attested by Strangers out of the Land, and not made or recorded *coram paribus*, but the Manner of recording the Claim of Liberties before the Justices in Eyre remained long after, as appeared by the Register, which seems to be a Continuance of the antient Practice; but when the Feoffment was not attested by the Parties in *Cartis*, yet they were attested and tried by the *Pares Comitatus*, and therefore if the Land lay in two Counties, the Entry must have been in each, because the Attestation of both Facts, if controverted, must have been tried by the *Pares Comitatus*.

If Husband and Wife make a Lease by Indenture, and in it make a Letter of Attorney to seal and deliver it as their Deed to the Lessee upon the Land, and such Lessee, in order to try the Title of the Land, declares, upon a Lease made by Husband and Wife, it is bad; but if there be a Necessity to try the Title of the Wife in the old Method, the Husband and Wife must execute the Lease upon the Land, in their proper Persons; because the Wife, not being a proper Person by herself, can't constitute an Attorney; but this Practice is sunk by the new Method, since by the Rule, the Demise is confessed, as supposed to be made on the Land.

The Act of Parliament that has been often mentioned, which in several Instances hath alter'd the Common Law, is an Act pass'd in the 4th of King George the Second, which is as follows:

Be

Cr. Car.
165. Cr.
Jac. 563.
Yelv. 1.
2. Brow.
248 Hob.
314.

The Attorney's

Be it Enacted, That in case any Tenant for Life, or any Term of Years, or other Person coming into the Possession of Lands or Tenements by Collusion with such Tenant, shall wilfully hold over any Lands or Tenements after the Determination of such Term or Terms, and after Demand made, or Notice in Writing given, for delivering the Possession thereof by the Landlord, or Lessor, the Person so holding over shall pay double the yearly Value, and the Defendant in such Action shall give Special Bail, and have no Relief in Equity.

In all Cases between Landlord and Tenant, after the twenty fourth of June, one thousand seven hundred and thirty-one, when Half a Year's Rent shall be in Arrear, the Landlord, having a lawful Right to re-enter for Non-payment, may serve a Declaration in Ejectment, without a formal Demand or Re-entry, or affix such Declaration on the Door of any demised Messuage, or notorious Place of the Lands, which shall be deemed a legal Service; and on Proof that half a Year's Rent was due before the said Declaration was served, and no sufficient Distress on the Premises, the Lessor shall recover Judgment and Execution as fully as in case a formal Re-entry had been made; and if the Lessee shall suffer Judgment to be recovered on such Ejectment and Execution, without paying the Arrears and Costs, and without filing a Bill within six Months after Execution, he shall be barred from all Relief in Law or Equity, other than by Writ of Error, and the Lessor shall hold the demised Premises as discharged from such Lease: But not to bar the Right of any Mortgagee, provided he pay all Rent in Arrear, and Costs, within six Months after Judgment obtained, and perform all the Covenants of the Lessee.

If a Lessee shall, within the Time aforesaid, file a Bill for Relief in Equity, no Injunction is to be granted, unless he, within forty Days after an Answer filed by the Lessor, shall deposit in Court the whole Rent in Arrear, besides Costs, subject to the Decree of the Court; and if the Lessor shall actually enter into the Possession of the demised Premises; and the Lessee on filing a Bill within the Time limited, obtain a Decree in his Favour, the Lessor is to be accountable only for the Profits really made of the Premises during his Possession thereof, and the Lessee is to pay to the Lessor so much Money as that fell short of the whole Rent in Arrear, before he be restored to his former Possession.

But if the Tenant, before the Trial, will either tender to the Lessor, or bring into Court, the Rent in Arrear, together with Costs, all further Proceedings shall cease; and if the Lessee be relieved in Equity, he shall enjoy the demised Premises, according to the Lease thereof, without obtaining a new one.

All Persons, Bodies Politick and Corporate, may have the like Remedy by Distress and Sale, in cases of Rent-seck, Rents of Assize, and chief Rents, which have been duly paid for three Years, within twenty Years before the first Day of the Parliament, or shall be hereafter created, as in case of Rent reserved upon Lease.

If any Lease shall be duly surrendered, in order to be renewed, and a new Lease granted by the chief Landlord, it shall be as good and valid, as if all the Under-Leases had been likewise surrendered, before the taking such new Lease; and all Persons vested therewith, shall be intitled to the Rents, and have the like Remedy for the Recovery thereof, and the Under-Lessees are to enjoy the demised Premises as fully, as if the original Leases had been still continued; and the chief
I Landlord

The Attorney's

Landlord shall have the same Remedy for recovering his Rent, as he would have had, in case the respective Under-Leases had been renewed under such new principal Lease.

This Act not to extend to Scotland.

A Habeas Corpus to remove a Cause out of the Sheriff's Court in London, returnable in the Court, is thus:

George the Second, &c. to the Mayor, Aldermen, and Sheriffs of the City of London, greeting: We command you (and every of you) that ye have, under safe and secure Conduct, the Body of C. D. who is said to be detained in our Prison under your, or one of your, Custodies, together with the Day and Cause of his being taken and detained (by whatsoever Name the said C. be therein charged) before us at *Westminster* on *Tuesday* next after the *Octave* of *St. Hilary*, to answer to *A. B.* in an Action of Debt, and further to do and receive all and singular those Things which our Court before us in this Case shall then and there consider of, and have you there, at the same Time, this Writ. Witness *Robert Raymond* at *Westminster* the 28th Day of *November*, in the sixth Year of our Reign.

Ventris.

A Habeas Corpus to remove a Person from the Fleet-Prison to the King's-Bench.

George the Second, &c. to the Warden of our Prison of the *Fleet*, greeting: We command you, that you have the Body of *A. B.* who is said to be detained in our Prison of the *Fleet*, under your Custody, under safe and secure Conduct, together with the Day and Cause

Cause of his being taken and detained (by whatsoever Name the said *A. B.* may be charged in the same) before us at *Westminster* on the *Octave* of the Purification of the Blessed Virgin *Mary*, to answer to *C. D.* in an Action of Trespass, and also to a Bill of the said *C.* by him exhibited against the said *A.* for a Debt of one hundred Pounds, according to the Custom of our Court before us, and further to do and to receive what our said Court before us shall in this Case then and there determine; and have you there, at the same Time, this Writ. Witness, &c. as before.

A Habeas Corpus on a Languidus in Prisona returned, i. e. that the Party is Sick in Prison.

George the Second, &c. to the Sheriff of *Middlesex*, greeting: We command you, that you have the Body of *A. B.* taken by you, and detained in our Prison under your Custody, altho' he be there Sick, (as by your Return, or by the Return of *A. B.* and *C. D.* mentioning the late Sheriff) late Sheriff of the said County, sent to us into our Court before us, it does manifestly appear before us, on *Tuesday*, next after the Morrow of the Purification of the Blessed Virgin *Mary*, to answer to *C. D.* of in an Action of Debt, or in an Action of Trespass (and then as in the former,) or if it be to charge a Man in Execution, then say, To make Satisfaction to *C. D.* for twenty Pounds, &c. for his Damages which he hath sustained, as well by reason of the said *A.*'s not performing certain Promises and Undertakings made by the said *A.* to the said *C.* at *Westminster* aforesaid, in your County, as for his Expences and Costs laid out by him about

The Attorney's

his Suit in that Cause, whereof the said *A.* is convicted, as appears to us on Record; and further to do and receive, *as in the former.*

A Habeas Corpus to the Palace-Court.

George the Second, &c. to the Judges of our Court of our Palace at *Westminster*, and every of them, greeting: We command you, and every of you, that you have before us at *Westminster*, under your safe and secure Conduct, the Body of *J. K.* detained in our Prison under your Custody, (as we are informed) together with the Day and Cause of his being taken and detained, by whatsoever Name the said *J. K.* is reputed in the same, on *Friday* next after three Weeks from the Day of *Saint Michael*, to answer to *J. B.* in an Action of *Trespas*, and also to a Bill of the said *J. B.* against the said *J. K.* for thirty-four Pounds upon Promises unperformed, to be exhibited according to the Custom of our Court before us, and then and there to do and receive all and singular those Things which our said Court before us shall then and there consider of in this behalf; and have you there, at the same Time, this Writ. Witness, &c.

A Habeas Corpus on a Capi Corpus returned.

George the Second, &c. to the Sheriff of *Middlesex*, greeting: We command you, that you have before us the Body of *C. D.* taken by you, and in our Prison detained under your Custody, (you having charged yourself with him by your Return lately sent into our Court before us) at *Westminster*, on *Tuesday* next after the Morrow of the Purification of the Blessed Virgin *Mary*, to answer to *A. B.* in an Action of *Trespas*

Trespass (or Debt) as the Case is, (*then as in the former.*)

A Habeas Corpus ad Testificandum.

George the Second, &c. to R. M. Esq; being the Marshal of our *Marshalsea* before us, greeting: We command you, that you have under safe and secure Conduct the Body of *A. B.* who is said to be detained in our Prison under your Custody, by whatsoever Name the said *A.* may be charged in the same Prison, before our faithful and beloved *Robert Lord Raymouth*, our Chief Justice, assigned to hold Pleas in our Court before us at *Westminster*, in the great Hall of Pleas there, (on the Day of the Sittings) at eight of the Clock in the Forenoon of the same Day, there to testify the Truth, to the best of his Knowledge, in a certain Cause now depending in our Court before us, and then and there to be tried between *C. D.* Plaintiff, and *E. F.* Defendant, in an Action of Covenant, (or as the Case is) and then immediately after the said *A. B.* hath then and there given his Evidence before the said Chief Justice to return him the said *A. B.* to the same Prison, under the like safe and secure Conduct; and have you there, at the same Time, this Writ, &c.

A Certiorari to remove an Attachment in London.

George the Second, &c. to the Mayor, Aldermen, and Sheriffs of the City of *London*, greeting: We being desirous, for certain Reasons, that there should be certified to us as well certain original Bills or Complaints levied or affirmed before you, any, or either of you,
I 3. against

The Attorney's

against *H. H.* Citizen and *Turner* of your said City, at the Suit of *S. A.* in an Action of Debt, as also all Attachments made thereupon of the Money, Goods, or Chattels of the said *H. H.* in the Hands of the said *S.* or of any other Person or Persons whatsoever in our Court before you, any, or either of you; we command you, that you certify to us on *Tuesday* after the Morrow of the Purification of the Blessed Virgin *Mary* at *Westminster*, all the said Plaints and Attachments, with all Things touching the same, in as full and ample Manner as the same now remain in our Court before you, together with this Writ, that we may cause to be further done thereupon what shall appear to us of right ought to be done. Witnels, &c.

A like Certiorari returnable before a Judge at his Chamber.

George, &c. to the Mayor, Aldermen, and Sheriffs of the City of *London*, greeting: We being desirous, for certain Reasons, that there should be certified to us, as well a certain Plaint or Original Bill, levied or affirmed in our Court before you, some, or one of you, against *J. L.* Executor of the last Will and Testament of *S. D.* deceased, at the Suit of *J. S.* in an Action of Debt, as also a certain Attachment made thereon for forty Pounds in Money, as the Money of the said *S. D.* at the Time of his Decease, and attached in the Hands and Custody of *I. C.* do therefore command you, and every of you, that immediately after the Receipt of this Writ, you send the said Plaint, Original Bill and Attachment, together with all Things touching the same, in as full and ample Manner as they
now

now remain before you, any, or either of you, before Sir *Francis Page*, Knight, one of our Justices assigned to hold Pleas in our Court before us, at his Chambers, situate in *Serjeants-Inn* in *Fleet-street*, that he our said Justice may cause to be done in this Particular what shall appear to him of right ought to be done; and have you there, at the same Time, this Writ. Witness, &c.

A Writ of Certiorari to the Court of the Mayor, &c. of the City of Exeter, is thus:

George the Second, &c. to the Mayor and Bailiffs of our City of *Exeter*, and to every of them in our Court at the *Guildhall* there, greeting: Whereas N. M. Executor of, &c. had lately in our said Court of our said City, according to the Custom of the same Court, impleaded one J. P. late of N. in the County of D. Gentleman and Alderman of the said City of *Exeter*, in an Action of Debt upon Demand of one hundred Pounds, and thereupon, in our said Court before you, obtained Judgment against the said J. for the Recovery of the said Debt; and we, for certain Reasons, being desirous, that the said Record should by you be certified to us, do therefore command you, that you send under your Seals the Record of the said Recovery, with all Things touching the same, into our Court before us at *Westminster*, (such a Day, &c.) plainly and distinctly, and in as full and ample Manner as it now remains before you, together with this Writ, so that we, on the Part of the said N. may be able to proceed to the Execution of the said Judgment, and do what shall appear to us of Right ought to be done. Witness *Robert Lord Raymond*, &c.

*The Attorney's**To the City of Bristol.*

George the Second, &c. to the Mayor, Aldermen, and Sheriffs of the City of *Bristol*, and to the Mayor and Constable of the Staple of the same City, and also to the Bailiffs, Mayor, and Community of the said City of *Bristol* of the Court of *Tolsey* there, and to the Bailiffs of the said Mayor and Community of the same City in their Court of *Pye-powder*, and to every of them, greeting: We, for certain Reasons, being desirous, that there should be certified to us, as well all Plaints levied or affirmed in our Court before you, any, or either of you, against *W. D.* at the Suit of *W. S.* as also, whatsoever Attachments are made on those Plaints, any, or either of them, on the Money, Goods, or Chattels of the said *W. D.* in the Hands of *A. B.* and *C. D.* &c. or any of them, do therefore command you, and every of you, that you send the said Plaints, and every of them, with all Things relating thereto, before us at *Westminster*, on *Tuesday* next after the *Octave* of *St. Hilary*, in as full and ample Manner as the same now remain before you, any, or either of you, together with this Writ, that we may cause to be further done thereupon, what shall appear to us of Right ought to be done. Witness, &c.

*A Certiorari to the Chief Justice of
the Common-Pleas to certify War-
rants of Attorney.*

George the Second, &c. to our beloved and faithful Sir *Robert Eyre*, Knight, Chief Justice of our Court of *Common-Bench*, greeting: We,
being

Being desirous, for certain Reasons, that it be certified to us, whether *Edward C. Executor* of the last Will and Testament of *Edward Cleve*, his Father, lately deceased, made *H.W. Gentleman*, his Attorney on Record against *T. S.* in an Action of *Trespass upon the Case*, before you and your Brethren our Justices of the *Common-Bench* of the Term of *St. Hilary*, in the fourth Year of our Reign; therefore we command you, that you search the Records and other Remembrance Rolls of Warrants of Attorney, in the County of *Somerset*, being in your Custody on Record of the said Term of *Saint Hilary*, in the said fourth Year of our Reign; and what you shall find therein concerning the said Warrants of Attorney, between the said Parties in the said Action, do you immediately certify to us, wheresoever we shall be in *England*, together with this Writ. Witness, &c.

A Certiorari to certify an Original.

George the Second, &c. to our beloved, &c. We being desirous, for certain Reasons, that it should be certified to us, whether there be a certain Original Writ between *W. E.* and *D.* his Wife, to present a fit Person to the Church of *T.* in the County of *S.* now of Record in your Custody or not; we command you, that you search the Original Writs and other Remembrances of our said Court of *Common-Bench*, that are filed of the Term of the *Holy Trinity*, in the fifth Year of our Reign, in your Custody of the County of the City of *London*, and whatsoever you shall find of the said Writ between the said Parties, together with the whole Return of the same Writ, do you, without Delay, certify to us wheresoever we shall then

be in *England*, and have you there, at the same Time, this Writ. Witness, &c.

A Superseas for want of declaring upon a Latitat.

George, &c. to the Sheriff of *Suffolk*, greeting: Whereas we lately commanded you to take *A. B.* if he could be found in your Bailiwick, and safely keep him, so as you might have him before us at *Westminster*, on *Wednesday* next after the Morrow of the *Holy Trinity* last past, to answer to *F. G. Gent.* in an Action of *Trespas*, and also to a Bill of the said *F.* to be exhibited against the said *A.* for a Debt of 120 l. according to the Custom of our Court before us, and because the said *F.* hath not declared against him the said *A.* within Two Terms, altho' the said *A.* in the same Court before us, came and put in Common Bail, at the Suit of the said *F.* in the said Action; therefore we command you, that you altogether cease from taking, attaching, imprisoning, or any ways molesting him on that Occasion, in any Manner howsoever, at the Suit of the said *F.* and if on that, and no other Occasion, you have taken and imprisoned him, and there detain him, then without Delay do you cause the said *A.* to be delivered out of Prison, in which he is so detained, under the Peril attending the Neglect thereof. Witness *Robert Lord Raymond*, &c.

The Form of a Rule by Consent in Ejectment, where the Proceedings are by Original, being omitted before, and somewhat varying from that where the Proceedings are by Bill, I beg leave to insert it here.

It is ordered, with the Consent of both Parties and their Attornies, that *A. B.* and *C. D.* be

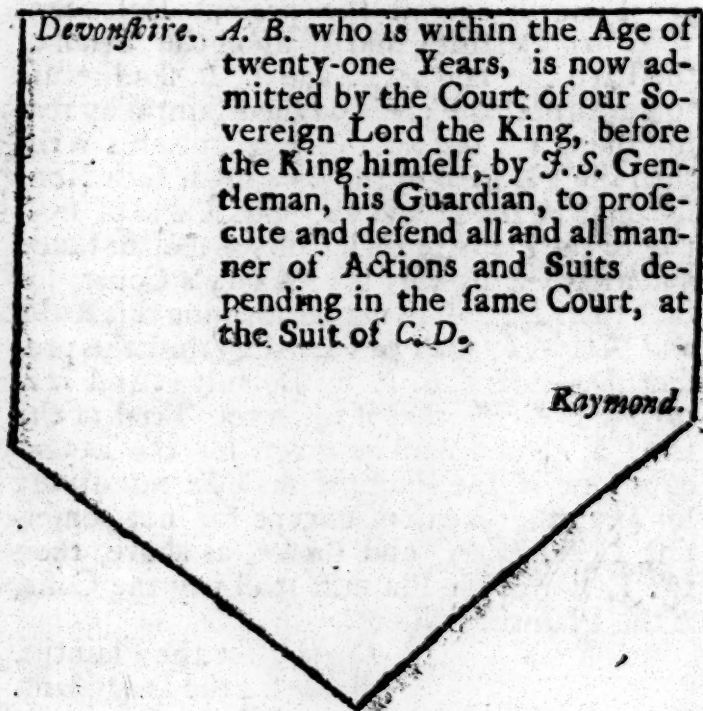
be made *Defendants* in stead of *J. R.* and that they forthwith appear at the Suit of the *Plaintiff*, and accept a *Declaration* in an Action of *Trespass* and *Ejectment* for *such of the Premises in Question as are in the Possession of W. M. their Under-Tenant*, and that they forthwith plead thereto not *Guilty*; and that they shall upon the Tryal of the Issue acknowledge *Lease, Entry, and actual Ouster*, and insist upon the *Title* only, otherwise Judgment shall be entred for the *Plaintiff* against the present Defendant *E. F.* by Default; and if upon the Trial of the Issue the said *A. B.* and *C. D.* shall refuse to perform this Rule, and the *Plaintiff* by reason thereof is not able to prosecute his Writ, then the *Taxation* of the *Costs* upon such *Non-suit* shall be staid; and the said *A.* and *C.* shall pay to the *Plaintiff* such *Costs* as shall be taxed and awarded by this his Majesty's Court, for such their Default in not performing this Rule, and Judgment shall be entred against the present Defendant *E. F.* by Default: And it is further ordered, that if upon the Trial of the Issue a *Verdict* shall be given for the Defendant; or if the *Plaintiff* shall be non-suited for any other Reason, except for not confessing *Lease, Entry, and Ouster*, as above, then the Lessor of the *Plaintiff* shall pay the *Costs*, if the *Plaintiff* will not.

Cruwys for the *Plaintiff*.
Baker for the Defendant.

Note, The Form of this Rule is, when it is drawn up particularly, and the *Mesne Tenant* is made Defendant; and when you would have it generally, it is only by leaving out the Words, *such of the Premises in Question as are in the Possession of W. M. their Under-Tenant*, and instead thereof inserting these Words only, *The Tenements in Question*. The

The Form of an Admission of a Guardian.

The Admission of a Guardian is thus to be written on a Piece of Parchment cut in the Form of a Bail Piece.



This must be carried to the Clerk of the Rules to be filed and entered with him, for it is no Record till that be done, and the Clerk of the Rules makes a Rule thereon.

The Terms and their Returns.

As to the General Returns to proceed by Original, see for the Returns in the Common-Pleas.

Hilary-Term.

On *Tuesday* next after the *Octave* of Saint Hilary.

On *Tuesday* next after fifteen Days from St. Hilary.

On *Tuesday* next after the Morrow of the Purification of the Blessed Virgin Mary.

On *Monday* next after the *Octave* of the Purification of the Blessed Virgin Mary.

Trinity-Term.

On *Friday* next after the Morrow of the Holy Trinity.

On *Wednesday* next after the *Octave* of the Holy Trinity.

On *Wednesday* next after fifteen Days from the Holy Trinity.

On *Wednesday* next after three Weeks from the Holy Trinity.

Easter-Term.

On *Wednesday* next after fifteen Days from the Feast of *Easter*.

On *Wednesday* next after three Weeks from the Feast of *Easter*.

On *Wednesday* next after one Month from the Feast of *Easter*.

On

The Attorney's, &c.

On *Wednesday* next after five Weeks from the Feast of *Easter*.

On *Monday* next after the Morrow of the *Ascension* of our Lord.

Michaelmas-Term.

On *Tuesday* next after three Weeks from *St. Michael*.

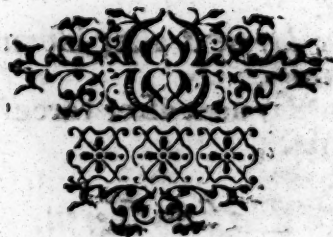
On *Tuesday* next after one Month from *Saint Michael*.

On *Tuesday* next after the Morrow of *All-Souls*.

On *Thursday* next after the Morrow of *Saint Martin*.

On *Wednesday* next after the *Octave* of *Saint Martin*.

On *Wednesday* next after fifteen Days from *St. Martin*.





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